DOCUMENT RESUME

ED 147 206 SO 010 353

AUTHOR Forst, Martin L.
TITLE Crime and Justice in America. A Study Guide for Courses by Newspaper.
INSTITUTION California Univ., San Diego. Univ. Extension.
SPONS AGENCY National Endowment for the Humanities (NFAH), Washington, D.C.; National Inst. of Mental Health (DHEW), Rockville, Md. Center for Studies of Crime and Delinquency.
PUB DATE 77
NOTE 72p.; For related documents, see SO 010 354-356
AVAILABLE FROM Publisher's Inc., 243 12th Street, Drawer P, Del Mar, California 92014 ($2.95, paper cover)

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS Adult Education; *Autoinstructional Programs; Concept Teaching; Content Reading; Corrective Institutions; Course Objectives; *Crime; Criminals; Discussion (Teaching Technique); Educational Resources; *Enrichment Programs; Instructional Materials; Interdisciplinary Approach; *Justice; *Legal Education; Minority Groups; Newspapers; Police; Primary Sources; Prisoners; Secondary Education; Social Problems; Study Guides
IDENTIFIERS *Controversial Issues

ABSTRACT

This study guide is one of several supplementary materials for a 15-week newspaper course about crime and justice in America. Course objectives are to help students understand the complexity of crime in America, the relationship between crime and the social system, uses and misuses of official statistics, competing philosophies of criminal punishment, and organizational pressures affecting the behavior of criminal justice personnel. Content and concepts include controversial issues in the fields of law, psychology, sociology, and criminology. The study guide integrates the themes of newspaper articles and primary source readings from the accompanying materials. Presentation of learning objectives and discussion of key concepts enable students to pursue the course independently as well as in groups. Divisions in the guide correspond with the six major units in the reader. Each unit in the guide contains a list of appropriate newspaper articles and selections from the reader, learning objectives, overviews of newspaper and reader materials, discussion of key concepts, actual questions, discussion questions, and a bibliography of related books and articles. (Author/AV)

Documents acquired by ERIC include many informal unpublished materials not available from other sources. ERIC makes every effort to obtain the best copy available. Nevertheless, items of marginal reproducibility are often encountered and this affects the quality of the microfiche and hardcopy reproductions ERIC makes available via the ERIC Document Reproduction Service (EDRS). EDRS is not responsible for the quality of the original document. Reproductions supplied by EDRS are the best that can be made from the original.

ED147206

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY
J. Scheiber

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

crime and justice in america

A STUDY GUIDE FOR COURSES BY NEWSPAPER

Martin L. Forst

Courses by Newspaper is a project of University Extension,
University of California, San Diego

Funded by the National Endowment for the Humanities

Supplemental funding for this course has been provided by the
Center for Studies of Crime and Delinquency,
National Institute of Mental Health

SP 010 353

Publisher's Inc. Del Mar, California

Copyright © 1977 by the Regents of the University of California. All rights reserved

ISBN: 0-89163-034-1

Library of Congress Catalog Card Number: 77-22227

ACADEMIC COORDINATOR

JEROME H. SKOLNICK, *Professor of Criminology and Director of the Center for the Study of Law and Society, University of California, Berkeley*

EDITORIAL DIRECTOR

JANE L. SCHEIBER, *University of California, San Diego*

RESEARCH ASSOCIATE

MARTIN L. FORST, *Center for the Study of Law and Society, University of California, Berkeley*

FACULTY COMMITTEE, UCSD

PAUL D. SALTMAN, *Chair; Vice-Chancellor for Academic Affairs and Professor of Biology*
JACK BEHAR, *Associate Professor of American Literature*
ROBERT C. ELLIOTT, *Professor of English Literature*
JOSEPH R. GUSFIELD, *Professor of Sociology*
JACQUELINE P. WISEMAN, *Professor of Sociology*

PROJECT DIRECTOR

GEORGE A. COLBURN, *University of California, San Diego*

NATIONAL BOARD

DAVID P. GARDNER, *Chair; President, University of Utah*
JESSIE BERNARD, *Research Scholar, Pennsylvania State University*
CARL N. DEGLER, *Professor of History, Stanford University*
RALPH ELLISON, *Author*
WILLIAM H. GOETZMANN, *Professor of American Studies, University of Texas*
RICHARD LEONARD, *Editor, MILWAUKEE JOURNAL*
FREDERICK A. OLAFSON, *Professor of Philosophy, University of California, San Diego*
PAUL D. SALTMAN, *University of California, San Diego*

DEAN, UNIVERSITY EXTENSION, UCSD

MARTIN N. CHAMBERLAIN

CONTENTS

Notes to the Student viii

Course Outline x

Section One: Understanding Crime 2

Learning Objectives
Overview
Key Concepts and Definitions
Factual Review Questions
Essay and Discussion Questions
Suggested Readings

Section Two: Institutionalized Crime 10

Learning Objectives
Overview
Key Concepts and Definitions
Factual Review Questions
Essay and Discussion Questions
Suggested Readings

Section Three: Street Crime 20

Learning Objectives
Overview
Key Concepts and Definitions
Factual Review Questions
Essay and Discussion Questions
Suggested Readings

Section Four: Criminal Law 30

Learning Objectives
Overview
Key Concepts and Definitions
Factual Review Questions
Essay and Discussion Questions
Suggested Readings

Section Five: The Administration of Criminal Justice 41

Learning Objectives
Overview
Key Concepts and Definitions
Factual Review Questions
Essay and Discussion Questions
Suggested Readings

Section Six: Punishment 53

Learning Objectives
Overview
Key Concepts and Definitions
Factual Review Questions
Essay and Discussion Questions
Suggested Readings

NOTES TO THE STUDENT

The materials for this Course by Newspaper consist of a series of fifteen weekly newspaper articles, which may be thought of as "lectures" by a distinguished faculty; a Reader or anthology of articles that supplement the newspaper articles; and this Study Guide, which is intended to integrate the themes of the newspaper articles and the articles of the Reader. A series of audio cassettes, related directly to the newspaper articles, is also available as a supplementary learning aid. For those students who are pursuing this course largely through independent study, the Study Guide serves in some ways as a substitute for class discussions.

The course has been arranged into six major sections with corresponding divisions in the Reader and Study Guide. A complete course outline appears on page x.

The Study Guide is designed to facilitate the learning process for participants in this Course by Newspaper. It is meant as a guide to, not a substitute for, a critical reading and evaluation of the course materials.

Each section of the Study Guide begins with a list of the newspaper articles and the appropriate supplementary selections in the Reader. This is followed by learning objectives for the section—some of the basic understandings of the issues that those who designed the course hope you will develop. The overview for each section is designed to provide the connecting links between articles, emphasizing similarities and differences among the various approaches to common problems. Key concepts and definitions highlight some of the major ideas and terms presented in the section, and factual questions will enable you to test your own knowledge of the materials. The discussion questions are designed to test your ability to use the facts in a discussion, as well as to serve as a review and a stimulus to further thought about the topics. Finally, each section contains a brief bibliography of additional books or articles, designed to supplement the bibliographies in the Reader for those students wishing to investigate the topics in greater depth.

Although each student will discover for himself or herself how best to use the course materials, we would suggest the following approach:

1. Read the newspaper article each week; clip it and carefully save it for future study and review.
2. Glance over the learning objectives, overview, and key concepts in the corresponding section of the Study Guide. These will call attention to some of the more important points in the newspaper and Reader articles and will help to focus your reading.
3. Read the appropriate selections in the Reader.
4. Reread the key concepts and overview more thoroughly this time.
5. Proceed to the factual questions, rereading the articles as necessary to answer them.

6. Consider the essay and discussion questions. Suggested guidelines to answers are provided with each question, although there is, of course, no single "correct" answer.
7. Turn back to the learning objectives. Have you met these goals?
8. Check the bibliographies in the Reader and Study Guide for suggestions of further reading on topics of interest.

The problems raised in the course materials are complex. Many of them have perplexed the civilized world for thousands of years. Obviously, we cannot come up with simple solutions to these problems. Rather, we have tried to illuminate their complexity and stimulate your own critical thinking about crime and justice in America.

OUTLINE FOR CRIME AND JUSTICE IN AMERICA

Section One: Understanding Crime

1. Crime: No Simple Solutions
   Jerome H. Skolnick, Director, Center for the Study of Law and Society, University of California, Berkeley

Section Two: Institutionalized Crime

2. White-Collar Crime
   Gilbert Geis, Professor of Social Ecology, University of California, Irvine
3. Organized Crime
   Francis A. J. Ianni, Professor and Director, Horace Mann-Lincoln Institute, Teacher's College, Columbia University

Section Three: Street Crime

4. Urban Crime
   James F. Short Jr., Professor of Sociology, Washington State University
5. Sex and Crime
   Lois DeFleur Nelson, Professor of Sociology, Washington State University; Visiting Professor, U.S. Air Force Academy
6. Race and Crime
   Alphonso Pinkney, Professor of Sociology, Hunter College, City University of New York

Section Four: Criminal Law

7. The Philosophy of Criminal Law
   Gertrude Ezorsky, Professor of Philosophy, Brooklyn College, City University of New York
8. The Limits of Criminal Law: Nonvictim Crimes
   John Kaplan, Jackson Eli Reynolds Professor of Law, Stanford University
9. Civil Liberties and Criminal Law
   Judge Damon J. Keith, Federal District Court, Eastern Division of Michigan

Section Five: The Administration of Criminal Justice

10. Police: Law Enforcement in a Free Society
    Jerome H. Skolnick
11. Pretrial Detention: Bail or Jail
    Caleb Foote, Professor of Law, University of California, Berkeley

12. Plea Bargaining and Sentencing
    Alan M. Dershowitz, Professor of Law, Harvard University

Section Six: Punishment

13. Punishment: A Historical Perspective
    David J. Rothman, Professor of History, Columbia University

14. The Prison Community
    John Irwin, Associate Professor of Sociology, San Francisco State University, and ex-inmate

15. The Future of Punishment
    Sheldon L. Messinger, Professor and former Dean, School of Criminology, University of California, Berkeley

Section One

UNDERSTANDING CRIME

NEWSPAPER ARTICLE

1. *Crime: No Simple Solutions*

READER SELECTIONS

The Many Faces of Crime
Ramsey Clark

Lock 'Em Up
James Q. Wilson

Are More Jails the Answer?
Jerome H. Skolnick

LEARNING OBJECTIVES

To become acquainted with the range and extent of criminal behavior

To gain insight into the complexity of crime in America

To understand the relationship between crime and various social, political, and economic conditions

To understand the relationship between the various types of criminal activity

To understand some of the recent attempts to combat crime

To gain an appreciation of the difficulty of devising viable solutions to the crime problem

OVERVIEW

This section is designed to acquaint the reader with a variety of issues and concepts basic to the understanding of crime and criminal justice in America. The topics covered include: the nature and extent of criminal behavior; the role of the criminal law in modern society; the administration of criminal justice; the punishment of law violators; and the relationship between crime and larger social, political, and economic phenomena. Since all of these topics will be analyzed in greater depth in the subsequent sections, this section also serves as an introduction to the rest of the Reader.

The newspaper article by Jerome H. Skolnick covers a broad range of issues central to the study of crime and justice. One point stressed by Skolnick is the complexity of crime in America. Criminal behavior is exhibited by people in all social classes for a wide variety of reasons. Perhaps the most sobering fact to the average American is that despite the federal government's increased financial support to combat crime in the early 1970s, the crime rate continued to rise rapidly. No matter what method is used to fight crime, nothing seems to work very well.

The political nature of crime is also empha-

sized in Skolnick's article. First, he defines crime in political terms, contending that it is behavior that legislatures have proscribed by law, the violation of which may invoke criminal punishment. Furthermore, political clout can create or modify our definitions of crime. Pressure groups are not only instrumental in shaping the content of the criminal law, they can also influence social conceptions of deviant behavior.

Skolnick also addresses the question of possible solutions to the crime problem. He notes that some people advocate sending more criminals to prison for longer periods of time. Though this may sound like a simple and attractive solution, Skolnick gives several reasons why it would not work.

Throughout Skolnick's article the difficulty in devising simple solutions to the crime problem is emphasized, with the cultural contradictions in American society receiving much of the blame. He suggests that there is a basic conflict between a society that wants to eliminate crime through aggressive police work and severe penalties, and a democratic society that values freedom and civil rights for its citizens.

The themes of Skolnick's newspaper article are expanded upon in the Reader selections. Ramsey Clark, a former United States attorney general, describes "The Many Faces of Crime," providing an overview of the scope of crime in America today. Not only does conventional crime ("street crime") haunt us, but political, corporate, and police crime also affect the quality of our lives. Criminal behavior, it seems, is almost as varied as human behavior, making it difficult, indeed, to devise a single explanation for all of its manifestations. Furthermore, Clark states, there is often a close, interdependent relationship between the different types of crime, for example, between organized crime and street crime.

To control crime, Clark maintains that we will have to deal with *all* types of crime, not just street crime. The basic solution proposed by Clark is *economic*. Problems of poor housing, inadequate health care, irrelevant education, and insufficient jobs will have to be eradicated before we can expect the crime rate to decrease. In addition, Clark argues, we should simplify and update our criminal codes; thus he emphasizes, as does Skolnick, the changing nature of the definition of crime.

In his article "Lock 'Em Up," James Q. Wilson focuses on the state of conventional crime rather than on the total crime picture. He observes that social programs such as those advocated by Clark, while worthy objectives in their own right, have failed to reduce the crime rate. Changes in objective economic or demographic conditions alone cannot solve the crime problem because they do not take into account the underlying changes in our values and our moral structure that are partly responsible for rising crime rates. Wilson also regards the promise of rehabilitation through imprisonment as a hopeless prospect. Rather than try to understand and cure the causes of crime, he contends that we should aim for a more modest definition of success—a reasonable reduction in the crime rate.

Wilson is probably the most distinguished of those criminologists whom Skolnick refers to in his newspaper article as advocating a "seemingly simple and therefore attractive solution" to the crime problem. He would achieve a reduction in crime rate by locking up more criminals, though not necessarily for longer periods of time. His recommendation is based on several assumptions about the nature of street crime: First, he asserts that street crime is committed primarily by young offenders; second, that most such crime is committed by repeat offenders (recidivists); and, finally, that a relatively large percentage of

crime in this country is committed by a relatively small number of individuals. If most of these serious offenders were locked up for three years or so, Wilson maintains, the crime rate might finally decrease.

In the final selection, Skolnick offers a rebuttal to what he considers is Wilson's narrow view of crime. Why, he asks, does Wilson seem concerned only with "predatory crime" and not the many other types of crime, such as those described by Clark? White-collar and corporate crime, Skolnick points out, cost the citizens of America substantially more money than is lost through conventional crimes. Expanding on his newspaper article, Skolnick maintains that Wilson's position is too simplistic. It is naive to ignore the social causes of crime and to rely on imprisonment to control crime in America. More jails, he asserts, are not the answer. He further criticizes Wilson's lack of consideration of the enormous economic and social costs of increased imprisonment.

So, what should be done with those who break the law? Should we simply lock them up? Should we seek alternative measures to control criminal behavior in our society? Should we attempt to find the underlying social causes of crime and eradicate those conditions? These are the important questions of our time that will be explored in more depth throughout the Reader.

KEY CONCEPTS AND DEFINITIONS

Crime

A crime is conduct that a legislature has prohibited and made punishable by fines and/or imprisonment or some other form of punishment. Just as the law changes, so, too, does our definition of crime. Conduct that was once criminal, such as drinking during Prohibition, may subsequently become legal as new laws are passed. Furthermore, the definition of crime varies from place to place; thus it is a felony (serious crime) to possess small amounts of marijuana in some states but not in others.

Law Enforcement Assistance Administration (LEAA)

In 1968 Congress passed a law titled the Omnibus Crime Control and Safe Streets Act as a national measure to combat crime. Among the many provisions of this massive piece of legislation was the establishment of the Law Enforcement Assistance Administration (LEAA), the mission of which was to dispense federal funds to state and local governments to aid in the eradication of crime. There are several ways that LEAA intended to fight crime: through educational programs for law enforcement and correctional officers; through increased research about the nature of crime and its solutions; through direct financial aid to secure more personnel and equipment for the existing criminal justice agencies; and through the funding of "model" programs to determine if new techniques might be more efficient than the antiquated measures currently in use. It will be noted in Skolnick's newspaper article that the billions of dollars spent by LEAA have had little effect on the crime rate.

FBI Crime Index

In order to assess the amount of crime in the country each year, the Federal Bureau of Investigation (FBI) created the FBI Crime Index. Local law enforcement agencies annually re-

port the number of certain crimes that occur in their jurisdictions to the FBI in Washington, D.C. The offenses are tallied and published each year in the *Uniform Crime Reports*. The FBI identifies seven different crimes in its index of offenses: murder, robbery, rape, burglary, assault, grand larceny, and auto theft. By analyzing the yearly changes in these seven index offenses and by comparing those changes with the variation in the population, one can get an indication of the trends in the crime rate throughout the United States. The *crime rate* refers to the number of crimes committed per 100,000 population.

Labeling

In their search for the causes of crime, criminologists have devised various theories. One of the more recent explanations for criminal behavior is called "labeling theory." This theory holds that as a person becomes involved in the criminal justice system (or the juvenile justice system), he is "labeled" a criminal. This label, in turn, will have an effect on how others react to him. Gradually, because of social ostracism, loss of employment opportunities, and so forth, the person begins to view himself as others view him—as a "criminal." He then begins to believe that his only viable course of action is more criminal activity to further his "criminal career." Thus, it is claimed that the label itself causes and perpetuates criminal behavior. Because of this theory, some criminologists recommend that juveniles and adults become formally involved in the criminal justice system only after all alternatives have been eliminated.

Deterrence

Deterrence is one of the main functions of the criminal law. It seeks to *prevent* people from violating the criminal law, rather than deal with them *after* the crime has been committed. Deterrence usually falls into two basic categories: specific and general. Specific deterrence means that if a person is punished for a crime, then *he* or *she* will not commit another crime in the future. General deterrence refers to a situation in which a person is punished for a crime and others are dissuaded from committing similar crimes for fear of being subjected to a similar punishment. Deterrence has always been a consideration in the imposition of sanctions in our society and is currently considered even more important than previously.

Rehabilitation

This term refers to the process by which a person who has been guilty of antisocial behavior, that is, a criminal act, is again integrated into society as a useful member. It generally implies repentance or a change of attitude on the part of the criminal that will lead him or her to follow more lawful patterns of behavior in the future. It sometimes includes training in new skills that will enable the individual to earn a living through legitimate means. Rehabilitation has been regarded as a major aim of punishment for 150 years, with increasing emphasis accorded to it since the 1950s. Very recently, however, many critics, both liberals and conservatives, have questioned the rehabilitative ideal.

Adaptation to Risk

When Skolnick discusses "adaptation to risk," he refers to the fact that criminals, like the rest of us, undergo certain psychological processes through which they are able to adjust to new situations in their lives, particularly to new and increased risks. This concept is of importance if we are to understand how different sanctions might actually work

in deterring criminals. Skolnick suggests that newly enacted criminal laws frequently do not have the anticipated consequences because criminals are able to adapt to the increased risk, thereby reducing the deterrent effect of the sanction.

Recidivism

Recidivism is the return to patterns of criminal behavior, particularly after having been punished for such behavior. It implies a relapse into criminal habits. Wilson claims that most crimes are committed by repeat offenders or recidivists.

FACTUAL REVIEW QUESTIONS

1. According to Skolnick, what is the definition of crime?
2. What does Skolnick mean when he states that the formation of criminal law is a reflection of political "clout"?
3. What did the Wickersham Commission conclude about the effects of Prohibition?
4. According to Skolnick, does deviance (the violation of the criminal law) have any *positive* functions for society?
5. How did the money spent by the federal government through LEAA for fighting crime between 1969 and 1974 affect the crime rate?
6. What, according to Skolnick, are the relative costs of sending a youngster to Harvard or a robber to San Quentin?
7. What appears to have been the result of former Governor Rockefeller's tough narcotics laws in New York?
8. According to Wilson, who commits most serious crimes?
9. What does Wilson believe should be the primary function of a term in prison or jail?
10. What does the Shinnar study cited by Wilson indicate?
11. What does Wilson mean by a "sober view" of man and his institutions?
12. What are some of the many faces of crime listed by Clark?
13. According to Clark, what motivates most criminals?

14. What type of crime — burglary or white-collar — costs American taxpayers more money annually?

15. What does Clark perceive as the most tragic of the many faces of crime?

16. Why does Skolnick call prisons "schools for crime"?

ESSAY AND DISCUSSION QUESTIONS

1. Discuss Skolnick's assertion that crime has "become an intrinsic part of life in this country."

Suggested Guidelines

1. Refer to Skolnick's newspaper article.
   a. Analyze the cultural contradictions in American society that are mentioned in the article.
   b. Notice how criminal justice generates, as well as controls, criminality.
2. Refer to Clark's article, "The Many Faces of Crime."
   a. How extensive is crime in America?
   b. Does criminal behavior exist in all social and economic classes?
   c. How are the different types of crime related to one another?

2. Compare and contrast the solutions to the crime problem, as presented in the three Reader selections.

Suggested Guidelines

1. Examine Clark's notion that crime is basically an economic problem.
2. Analyze Wilson's plan for the increased incapacitation of criminals and his feelings regarding the economic solutions to crime.
3. React to Skolnick's claim that more jails are not the answer to the crime problem.

SUGGESTED READINGS

Note: An extensive, annotated bibliography for each topic is included in the Reader. The titles here are of general interest and are offered as a supplement to the Reader bibliography.

Articles

Cook, F. J. "There's Always a Crime Wave: How Bad's This One?" *New York Times Magazine*, October 6, 1968, 38–39.

Lewin, Nathan. "Platitudes About Crime." *The New Republic*, July 5 and July 12, 1975, 19–21.

Books

Becker, Howard S. *The Outsiders*. New York: Free Press, 1963.

Clark, Ramsey. *Crime in America*. New York: Pocket Books, 1971.

Quinney, Richard. *The Problem of Crime*. New York: Dodd, Mead, 1970.

Van den Haag, Ernest. *Punishing Criminals*. New York: Basic Books, 1975.

Section Two

INSTITUTIONAL CRIME

NEWSPAPER ARTICLES	READER SELECTIONS
2. *White-Collar Crime* Gilbert Geis	*Crime and Business* Edwin H. Sutherland
	Crime in the Suites Ralph Nader and Mark Green
	It Beggars Description The Nation
	Annals of Business: Funds Gray and Black John Brooks
	America's Most Coddled Criminals Blake Fleetwood and Arthur Lubow
	Medicare and Medicaid Frauds Michigan Department of Social Services
	The Sins of Sears Are Not News in Chicago Michael Hirsh
3. *Organized Crime* Francis A. J. Ianni	*The Crime Society* Francis A. J. Ianni and Elizabeth Reuss-Ianni
	Demand, Supply and Profit Donald R. Cressey
	Lepke, the Shy Boss of Murder Inc. Meyer Berger
	Organized Crime The President's Commission
	New Mafia: Black, Hispanic and Italian Styles Francis A. J. Ianni

LEARNING OBJECTIVES

To understand

- ☐ the nature of institutional crime and how it differs from conventional crime
- ☐ the relationship between institutional crime and the social system
- ☐ why institutional crime thrives and is so hard to eradicate
- ☐ the corrosive effects of institutional crime on our government
- ☐ the history and development of organized crime
- ☐ the current trends in organized crime

OVERVIEW

This section considers two forms of criminal behavior—white-collar crime and organized crime—both of which are often overlooked in discussing the "crime problem" in America. This "institutionalized crime"—deeply ingrained in our social institutions—is a type of illegal behavior that has significant consequences for our society, though it does not pose a direct personal threat to us in the same way as most forms of "street" or "conventional" crime do. These consequences will be explored in some detail in this section.

White-Collar Crime

In his newspaper article, Gilbert Geis presents an overview of white-collar crime or, as he terms it, "upperworld crime." He employs the label—upperworld crime—to emphasize how it contrasts with the more common "underworld" type of crime. Upperworld crime is committed by persons from the upper or middle social classes in the course of their regular employment. It includes crimes committed by businessmen, politicians, doctors, and other professionals who are generally highly respected members of their communities. Geis points out that although there are varying explanations for upperworld crime, those attributed to underworld crime, such as poverty, broken homes, reading disabilities, and the like, certainly do not apply. Many individuals involved in this type of law breaking make sizeable incomes, yet they are not satisfied and for some reason are motivated to take more—illegally. Unfortunately, the public, which generally assumes that politicians are corrupt and that business people make profits by unethical (if not illegal) means, inadvertently contributes to the situation.

Geis writes that Americans will have to learn the facts about white-collar crime before the problem can be solved. First, we will have to recognize its nature and realize that it is a type of *criminal* behavior, no less illegal than burglary or robbery. Then the public must be made aware of its importance—how much it costs each of us. Generally, this type of crime costs each citizen a small sum, but it can amount to billions of dollars in illegal profits annually. Geis concludes that the problem of white-collar crime is formidable and will be difficult to contend with. This observation is

borne out by the selections in the Reader.

The article by Edwin H. Sutherland is a classic in its field because little attention was paid to white-collar crime before his precedent-setting article of 1940. He is responsible for initiating the study of white-collar crime as well as formulating the standard definition which, though somewhat vague, is still used today.

Though there existed no index of the extent of white-collar crime when Sutherland was writing in 1940, he found evidence in Federal Trade Commission annual reports of extensive illegal activity on the part of leading American corporations. He claimed that financial losses due to white-collar crime were at that time probably greater than the financial losses from burglaries, robberies, and larcenies (theft) committed by conventional criminals.

The selection by Ralph Nader and Mark Green updates the status of white-collar crime, some thirty years after Sutherland initially studied it. From their article, one reaches the depressing conclusion that many of the observations made by Sutherland are still applicable today; corporate crime in America pays. Nader and Green advocate a variety of tougher sanctions to deter corporate criminal activity.

The next several Reader selections describe the operation of white-collar crime and discuss why this type of institutional crime is so difficult to control. The selection titled "It Beggars Description" illustrates that the sanctions currently meted out—even prison terms and stiff fines—simply do not deter white-collar or corporate criminals. The article argues that such sanctions will not work as long as the attitudes of American businessmen do not change. At present, the pressures on business professionals to succeed at any cost, as well as the fact that committing white-collar crimes is an established practice, make it difficult for many to maintain high legal standards.

John Brooks, in "Annals of Business: Funds Gray and Black," explains how these same pressures can distort the ethical values of some business executives to such a degree that they do not believe that what they are doing is wrong. Just as Wilson noted a correlation between the loss of shame associated with street crime and a rise in crime rates, so it would appear that business values are partly responsible for the extent of white-collar crime.

The chart compiled by Blake Fleetwood and Arthur Lubow shows that the punishment inflicted on white-collar criminals is relatively light, compared to that received by street criminals, despite the fact that thousands of people can be bilked out of life's savings or have their health endangered by a single white-collar crime.

The Reader selection taken from the United States Senate hearings on Medicaid and Medicare fraud points out that white-collar crime is not limited to businessmen and politicians. As Geis mentions in his newspaper article, doctors and pharmacists, of whom we expect the highest ethical standards, are also guilty of white-collar crime, engaging in a variety of illegal activities to cheat on Medicaid and Medicare claims.

In his newspaper article, Geis indicates that a major obstacle in fighting white-collar crime is the lack of public awareness about its existence. The Michael Hirsh article offers one possible explanation of why white-collar crime is published so little—the close relationship between the business corporations and the media. When Sears, Roebuck and Company was charged with illegal business practices in Chicago, the Chicago press did not cover the story. Hirsh suggests that the lack of press coverage might be explained by the Chicago newspapers' lucrative advertising arrangements with Sears.

Organized Crime

Like white-collar crime, organized crime is often taken for granted.

Organized crime, suggests Francis A. J. Ianni in his newspaper article, has become such an integral part of American life that we do not even consider it part of the "crime problem." Nevertheless, it remains a mystery to most people, primarily because few know exactly how it operates or what groups control it.

One point of dispute among scholars, Ianni points out, is the origin of organized crime in America. Ianni maintains that organized crime is indigenous to this country and not an import from Italy, as many believe. Its roots lie in the curious relationship among members of minority groups, politicians, and organized illegal activities. The relationship between organized crime and politics is a close one, particularly in large cities, where it is claimed that organized crime and politicians need each other.

In his article, Ianni shows that from the earliest days, members of different social or ethnic groups have used organized crime to escape from the ghetto. The Irish, the Jews, and, since the 1930s, the Italians have successively dominated the leadership of organized crime. Ianni claims that the Italians, just like the other groups before them, are becoming more acculturated into the legitimate social world and new groups will assume leadership in organized crime. In particular he mentions the blacks and the Hispanics as likely successors to control the rackets in America.

The Reader selection titled "The Crime Society" outlines the history of organized crime since the 1890s. By the 1950s, organized crime had become the object of intense study by various governmental commissions, which concluded that at the core of organized crime was the Mafia, an Italian-American brotherhood that controlled most of the lucrative rackets in the country. Ianni and Ianni are skeptical of this position. They believe that organized crime could more accurately be characterized as a social institution that is a functional part of American life.

If organized crime is supposed to be functional, what are some of the functions and services it performs? Donald Cressey answers this question in the selection titled "Demand, Supply and Profit," contending that organized crime thrives because it provides illegal goods and services demanded by large segments of the public. Most persons engaging in gambling, drug use, prostitution, or the purchase of stolen goods do not consider themselves victims of crime; they are quite willing participants and do not report the organized criminals to the police. It is thus very difficult for law enforcement agencies to control organized criminal behavior.

Some persons do, of course, become unwilling victims of organized crime. The Reader selection about Lepke describes a central figure in the more violent side of organized crime. Though often brutal, this violence is not random; it is generally directed at rivals or others directly involved in organized crime. This article by Meyer Berger provides both insight into the personality and motives of someone who lives by exploiting others and a case study of the tactics used by organized crime to gain control of legitimate organizations.

Because organized crime is so profitable, millions of dollars are available to ensure that those involved will not be prosecuted or harassed. The selection from the President's Commission Report on Organized Crime illustrates how money buys influence at all levels of law enforcement, thus, in a sense, making us all victims by corrupting our system of justice. This report further illustrates

the point Ianni makes in his newspaper article about the close alliance between organized crime and politics, an alliance that constitutes a major reason for the survival of organized crime.

In the final selection, Ianni discusses the "New Mafia." The article accepts the assertion that organized crime provides upward mobility and economic independence. Ianni also claims that a certain ethnic succession exists, and that a group that has already achieved some measure of socioeconomic status need no longer utilize that route. Evaluating the current situation of organized crime in the United States, Ianni concludes that it is in a state of transition, with the Italian-American groups losing some power to the black and Hispanic groups. However, the newly emerging groups at present seem to lack an effective organizing principle such as the role of kinship for the Italian-Americans.

KEY CONCEPTS AND DEFINITIONS

White-Collar Crime

According to Edwin H. Sutherland, who first defined it in 1940, white-collar crime is "a violation of the criminal law by a person of the upper socioeconomic class in the course of his occupational activities."

Upperworld Crime

Geis uses this phrase in his newspaper article, in which he describes the type of illegal activity generally known as white-collar crime. This term is used in juxtaposition to "underworld crime," which relates to the involvement of lower class and gangland figures in criminal activities. Upperworld criminals, by contrast, are said to be from the upper socioeconomic classes and commit their crimes as they perform their official duties. By employing this phrase, Geis emphasizes that persons in *all* social and economic classes are involved in criminal behavior, not just persons from the lower classes, as is generally assumed.

Antitrust Crime

Antitrust crime can generally be defined as the restriction of economic competition and, according to Nader and Green, includes such activities as price fixing and exclusionary boycotts. The Sherman Antitrust Act of 1890 made such activities criminal offenses, for which a violator may receive up to a year in jail and/or a $50,000 fine per violation. Nader and Green emphasize that although antitrust violations are quite extensive throughout American industry, the Department of Justice prosecutes relatively few offenders—an average of only twenty-five per year from 1960 to 1964 and eleven per year from 1965 to 1970. The American consumer is harmed by antitrust violators because consumer prices are, thereby, inflated and business inefficiencies are rewarded.

No Contest Plea *(Nolo Contendere)*

When a person (or corporation) is charged with a criminal offense, he may enter one of several pleas in court: not guilty, guilty, or *nolo contendere*. The plea of *nolo contendere* is similar to the plea of guilty, but the conviction cannot be used against the defendant in a civil suit. Additionally, *nolo contendere* does not carry as negative a connotation as "guilty" to the general public. Therefore, many corporate criminals prefer this plea, and it has accounted for 79 percent of all antitrust convictions over the

last decade. With this plea, the court is also more likely to be lenient in sentencing the antitrust violator, for courts rarely impose the maximum penalty in antitrust cases.

Regulatory Agencies

In addition to the courts of law, the United States has various regulatory agencies that attempt to control criminal law violations. Whereas the courts generally deal with conventional street criminals, the regulatory agencies handle the violations by corporations and business enterprises. However, when a criminal conviction is secured through a regulatory agency, it does not seem to carry the same moral stigma as a conviction in a criminal court.

The Securities and Exchange Commission, mentioned in John Brooks' article on illegal political contributions by the oil companies, is designed to regulate the sale and exchange of stocks and bonds among American corporations. The Federal Trade Commission is supposed to control, among other things, illegal business practices. Examples of FTC activities are presented in the Sutherland article on business and crime and in the Hirsh article discussing the alleged "bait-and-switch" selling tactics of Sears, Roebuck and Company.

Mafia and Cosa Nostra

The Mafia can be described as a social system that originated in southern Italy and in Sicily and that, through a loosely knit chain of clan-like gangs, engages in illegal activities. Evidence suggests that this network of families moved to the United States to continue its criminal activities. Several governmental commissions have concluded that this national crime syndicate's leaders control most of the lucrative rackets in this country.

In 1963 Joseph Valachi maintained that he was a member of a nationwide criminal organization called "Cosa Nostra," a term that is now used interchangeably with Mafia. Though many people equate the Mafia with organized crime, Ianni suggests that organized crime is too complex to be dominated by one ethnic group.

The New Mafia

The New Mafia, as discussed by Ianni, refers to the blacks and Hispanics who are now beginning to emerge as major figures in organized crime. Since the 1930s, Italians have held the leadership in organized crime. They came from the ghetto and eventually gained power and money. As the Italians become acculturated into the mainstream of American society, Ianni believes, the current ghetto dwellers will take over the key positions in organized criminal activities. According to Ianni, a Mafia is primarily a form of social protest that uses crime as its major weapon of protest.

FACTUAL REVIEW QUESTIONS

1. According to Geis, what is the hallmark of white-collar crime?
2. What are the relative costs to the American public of white-collar and conventional crime?
3. According to Sutherland, what is the definition of white-collar crime, and what is its most general characteristic?
4. In general, how have the courts treated white-collar criminals, compared to "street" criminals?
5. According to Sutherland, does poverty explain all types of crime?
6. According to Nader and Green, how prevalent is price fixing in American industry?
7. What are the four basic sanctions that can be imposed against corporate criminals?
8. What, if any, are the legal restrictions on corporate contributions to political campaigns or candidates?
9. According to Brooks, how typical of other corporations were Gulf Oil's political contributions?
10. What are some of the tactics used by doctors and pharmacists to cheat on Medicaid and Medicare claims?
11. What possible explanation does Hirsh suggest for the poor media coverage of alleged "bait-and-switch" tactics by Sears, Roebuck and Company?
12. What does the Harris Poll, cited by Ianni, indicate about American beliefs about organized crime?
13. In addition to goods and services, what does organized crime have to offer ghetto dwellers?
14. What do Ianni and Ianni think is the difference between the Mafia and the Cosa Nostra?
15. What did Estes Kefauver's Senate Crime Committee and the President's Commission conclude about organized crime?
16. Of what significance were the "De Cavalcante tapes"?

17. What important claim did Joseph Valachi make before the Permanent Subcommittee on Investigations of the Committee on Government Operations?

18. According to Cressey, how does organized crime manage to take over individuals who wish to engage in illegal activities such as rackets?

19. What tactics did Lepke's organization use to gain control of labor unions?

20. According to Ianni, what groups constitute the New Mafia?

ESSAY AND DISCUSSION QUESTIONS

1. Why does institutional crime (both white-collar and organized crime) seem to thrive in America?

Suggested Guidelines

1. Refer to the Geis and Ianni newspaper articles. What do they state about American attitudes toward institutional crime?
2. Consider Cressey's article on the general public's demand for goods and services. How does this demand affect organized crime?
3. Analyze the articles by Nader and Green and by Brooks and the editorial from *The Nation*. What do they say about business attitudes and the effect of current sanctions on corporate crime?
4. Consider the findings of the Commission on Law Enforcement and Administration of Justice.
   a. What is the relationship between organized crime and politics?
   b. How does organized crime neutralize law enforcement?

2. Why does Ianni state that organized crime is an "integral part of the politics and economics of American life"?

Suggested Guidelines

1. Refer to his newspaper article. How does Ianni characterize organized crime's involvement in the political process?
2. Consider Cressey's article, "Demand, Supply and Profit."
   a. How much public demand is there for illegal goods and services?
   b. What does he say about the relationship between organized crime and labor unions?

3. **What can be done to eradicate institutional crime (both organized crime and white-collar crime)?**

Suggested Guidelines

1. Examine the Geis and Ianni newspaper articles.
   a. What do they suggest needs to be done?
   b. What is the role of public opinion?
2. What do Nader and Green think should be done to corporate criminals?
   a. Should there be minimum penalties?
   b. Should convicted corporate criminals be allowed to remain on their jobs?

SUGGESTED READINGS

Articles

Bell, Daniel. "Crime as an American Way of Life." *Antioch Review* 13 (1953), 131–154.

Johnson, Earl, Jr. "Organized Crime: Challenge to the American Legal System." *Journal of Criminal Law* 53 (1962), 399–425, and 54 (1963), 1–29.

Newman, Donald J. "Public Attitudes Toward a Form of White-Collar Crime." *Social Problems*, January 1953, 228–232.

Ruth, Henry S., Jr. "Why Organized Crime Thrives." *The Annals of the American Academy of Political and Social Science* 374 (1967), 113–122.

Smith, Richard Austin. "The Incredible Electrical Conspiracy." *Fortune*, April 1961, 132–137.

Books

Douglas, Jack D. and John M. Johnson. *Official Deviance: Readings in Malfeasance, Misfeasance, and Other Forms of Corruption*. Philadelphia: Lippincott, 1977.

Mass, Peter. *The Valachi Papers*. New York: Putnam, 1968.

Tyler, Gus, ed. *Organized Crime in America*. Ann Arbor, Mich.: University of Michigan Press, 1962.

Section Three

STREET CRIME

NEWSPAPER ARTICLES	READER SELECTIONS
4. *The Urban Crime Problem* James F. Short Jr.	*The Rumble This Time* Walter Miller
	Portrait of a Mugger James Willwerth
	Careers in Dope Dan Waldorf
	A Note on Victimology Morton Hunt
	Let the Punishment Fit the Crime Philip Brickman
	Learning About Crime—The Japanese Experience David H. Bayley
5. *Sex and Crime* Lois DeFleur Nelson	*The Rise of the Female Crook* Freda Adler
	The Police Blotter Rapist Susan Brownmiller
	Some Myths About the Sex Offender Paul W. Tappan
6. *Race and Crime* Alphonso Pinkney	*Conditions of Life in the Racial Ghetto* National Advisory Commission on Civil Disorders
	Blacks, Crime, and American Culture John A. Davis
	Police Patrol and Mexican Americans Armando Morales

LEARNING OBJECTIVES

To understand

- ☐ the nature and extent of street crime
- ☐ trends in crime rates and changing crime patterns
- ☐ the uses and misuses of official statistics
- ☐ the relationship of street crime to larger social and economic phenomena
- ☐ the relationship between sex and crime
- ☐ the relationship between race and crime

OVERVIEW

Street crime is of great concern to most Americans, particularly those living in urban areas. Though financially less costly than institutional crime, it affects our daily lives by dominating the news and arousing deep anxieties. This section explores three related aspects of street crime: the urban crime problem, sex and crime, and race and crime.

Urban Crime

James F. Short Jr., in his newspaper article, states that the "crime problem" is generally an urban phenomenon. Though the crime rate is rising rapidly in the rural and suburban areas of the country, most crime appears to be committed in the urban areas, principally the ghettos. Short emphasizes a topic that will recur throughout this section: the difficulty of interpreting official statistics. Relying on a variety of sources, such as victimization and self-report studies, Short arrives at the inescapable conclusion that crime in America is much more extensive than one might expect from an assessment based solely on an analysis of official government statistics.

Not only is crime an urban problem, it is also a youth problem. Short states that the majority of crimes—serious as well as minor—are committed by people between the ages of fifteen and the early twenties. Because of this strong relationship between youth and crime, it is likely that the crime rate will rise and fall quite independently from any social programs that might be instituted to fight it. The crime rate will probably decrease significantly only after there is a decline in the number of young people.

Short is not completely fatalistic. There are things that can be done to alleviate the crime problem, including community participation. Individual citizens must take it upon themselves to complain about crime, appear as witnesses, look out for neighbors' property, and subject both the police and potential offenders to community pressure. While community involvement will not solve the crime problem, it certainly will help.

The Reader selections on the urban crime problem are designed to further an understanding of who is involved in street crime and why. They begin with a "Portrait of a Mugger," in which James Willwerth offers a

dramatic portrayal of a "working mugger." His attitudes, his values, and the secrets of his trade are all vividly described. He mugs because he likes money, and mugging is his only means to that end.

In "Careers in Dope," Dan Waldorf describes initiation into heroin addiction and the addict's subsequent relationship to his victims, his community, and the police. Most addicts have to engage in some form of "hustling" (illegal activity) to support their habits. Females generally turn to prostitution and males typically become thieves. Gradually, the number of people from whom the addict steals expands—from his family and friends to the larger community. Eventually, he may become like the mugger described in the previous selection or he may concentrate on other forms of crime. Law enforcement authorities estimate that much of the conventional crime in large urban areas is directly attributable to heroin addiction.

Youth gangs are also an important force in the urban crime problem. Walter Miller discusses the recent changes in youth gang attitudes and activities in his article "The Rumble This Time." Youth gangs used to be viewed primarily as groups of adolescents interested in fighting rival gangs and defending their own turf. However, Miller and his associates found that today's youth gangs are interested primarily in *money*. To get it, they engage in street crime; they rob, steal, mug, burglarize, and extort money from the weak. Miller concludes that gang violence and conventional crime will increase in the future. It is also likely that youth gangs will increasingly venture out of the ghetto areas into the general community to victimize middle-class citizens who possess more money and material goods.

Some people are more likely than others to be victimized. Morton Hunt discusses some of the factors that make some people more likely targets for the mugger: age, sex, race, and availability. While some of these factors are obviously beyond control (such as age, race, and sex), others are more subtle and may be controlled by the potential victims. Thus, Hunt suggests that people are, to varying degrees, responsible for whether or not they fall prey to criminals.

The selection titled "Let the Punishment Fit the Crime" addresses an aspect of victimology not frequently found in professional journals: the rights of the victim. While traditionally most attention has been focused on the criminal and *his* legal rights, Philip Brickman raises the question, What should be done to a convicted offender so that the *victim* receives justice? He recommends the greater use of restitution.

Criminologists have devised many theories to explain the rise of street crime. David H. Bayley, in his comparison of American and Japanese crime rates, explores one of the more prevalent of these theories—that social modernity *causes* crime. Modernization involves greater urbanization, industrialization, and technological advancement—factors that have been blamed for the high crime rate in the United States. Bayley argues, however, that the social modernity theory is invalidated by the example of Japan. Japan is also highly urbanized and industrialized, as well as more densely populated than the United States, but its crime rate is *decreasing*. Bayley contends that there are other factors, including social organization and values, responsible for crime (or the lack of it) in modern industrialized societies.

Sex and Crime

Social values are also partly responsible for changing patterns of sex and crime, according to Lois DeFleur Nelson, whose newspaper article discusses another topic of current inter-

est—the significant increase in female criminality. One of Nelson's central points is that changing social roles of women affect crime patterns—both the offenses that women commit and the manner in which they are handled by criminal justice agencies. She also notes that conceptions of *why* women commit crimes are changing. Finally, Nelson predicts that as women constitute a larger part of the labor force, have greater personal freedom, and acquire the same aspirations as males, female criminality will rise. This last point is elaborated in Freda Adler's Reader article, "The Rise of the Female Crook."

Susan Brownmiller's article "The Police Blotter Rapist" changes the focus of the discussion of sex and crime from woman as offender to woman as *victim*. Like several other authors in this section, she stresses the skepticism with which official statistics must be viewed. Brownmiller then explores some of the official data and objective sociological studies, dispelling many of the myths about rapists. Because of the offense characteristics of rapists, Brownmiller concludes that there is not too much one can do to guard against becoming a rape victim.

Paul Tappan also explodes "Some Myths About the Sex Offender," providing data to counter many popular misconceptions. Referring to *all* categories of sex offenders, he states that most sex offenders are relatively harmless and generally do not progress from minor offenses to more serious ones.

Race and Crime

Alphonso Pinkney discusses another aspect of street crime in his newspaper article, "Race and Crime." After mentioning how difficult it is to interpret official statistics, he points out that crime is related to *social* conditions, not merely to race. He catalogs a variety of social conditions related to crime, most of which are discussed in some detail in the Reader selections. Among the more important factors contributing to the high crime rate are high unemployment, poverty, prejudice, and unequal treatment before the law.

The selection from the National Advisory Commission on Civil Disorders details some of the social factors that Pinkney claims cause crime, focusing on the many disadvantages facing persons living in the ghetto community.

John Davis offers a slightly different interpretation of the high crime rate of black Americans. Although the social and economic conditions in which blacks must live are indeed poor, these conditions by themselves do not explain black crime. Rather, Davis asserts, these social conditions represent a *symbol* of the racial oppression that has existed for generations. Black crime is a *reaction* against that oppression. Much of black crime is an expression of bitterness turned inward, for approximately 85 percent of black crime is directed against other blacks. Though racism may well have an economic base, it also has important practical consequences of its own.

The final selection again deals with official crime statistics, but the author is not simply issuing a warning about the difficulty of interpreting them. Armando Morales additionally illustrates that inadequate statistics or misinterpreted statistics can have harmful social consequences as well. If the police read the official statistics and see that a certain area of town has a large amount of reported crime, then more police are assigned to that area. As a result, the number of arrests rises. Eventually, it becomes impossible to determine how much of the increased crime rate is due to the behavior of the offenders in the neighborhood and how much is due to a disproportionate

number of police patrolling the neighborhood. Morales suggests that law enforcement agencies must reassess their use of police patrols and the statistical assumptions of their deployment.

KEY CONCEPTS AND DEFINITIONS

Victimization Studies

Criminologists have found that accurately estimating the extent of crime in society is a difficult task. Generally, they have relied on official statistics from law enforcement agencies. Official statistics, however, reflect only the offenses reported to the police. Since many crimes are unreported, criminologists have only been able to guess at their actual number and type. Recently, researchers have begun to study criminal victimization. Surveys are conducted in randomly selected areas to assess how many persons have been victimized by various types of crimes without reporting those crimes to the police. This has resulted in an awareness that there is much more crime being committed than was previously believed.

Hidden Crime

Crime that is not reported to the police is called hidden crime because it is beyond the realm of official scrutiny. There have been attempts, however, to assess the extent of hidden crime. One way is through victimization studies, as described above. Another is through self-report studies, in which people are asked to indicate if they have ever committed any of a list of specified offenses. It is a common finding that many people have committed criminal offenses for which they could have been legally punished, but were never detected or apprehended. These types of studies reveal that the hidden crime rate in America is quite extensive.

Victimology

Victimology, the study of the victims of a crime, is a relatively new field in the social sciences. Traditionally, social science researchers have studied *criminals* to determine what causes them to break the law. The focus of victimology is on the general characteristics of the victims, as well as the functional relationship between the victim and his offender. Various classifications of culpability on the part of the victim have been developed; some sociologists feel that certain people set themselves up as "unwilling" victims to criminal offenses.

Social Modernity and Crime

As society becomes more modern, it undergoes certain transformations. It generally becomes more industrialized, technological, and urbanized, as well as more densely populated. Since it has been observed that the crime rate is higher in large urban centers, the hypothesis has been offered that social modernity *causes* crime. The Bayley article, comparing crime in the United States and Japan, dispels this notion.

Freudian Psychology

Sigmund Freud (1856–1939) founded a branch of psychology that has had a profound effect on American culture. Among the many revolutionary ideas first posited by Freud were that events during childhood greatly influence adult behavior, and that the sex of the child will also, to a large extent, determine

behavior in adulthood. His famous phrase, "anatomy is destiny," means that being born male or female conditions future behavior. When these ideas are applied to explain female criminality, one might conclude that the differences observed in male and female crime patterns are based primarily on the individual psychology and biology of the sexes. Brownmiller feels that Freudian psychology, with such simplistic explanations, has had a negative effect on the perceptions and attitudes about women.

Modus Operandi

The modus operandi, or the M.O. as the police call it, is the "method of operation" of the criminal—that is, the manner or style in which the criminal commits his offenses. The police believe that some criminals have a set pattern of behavior and that piecing together the evidence and defining the M.O. of a particular criminal will contribute to solving the case.

Founded and Unfounded Crimes

After crimes are reported, the police investigate the allegations to determine if a crime has really been committed. Crimes that they agree have been committed are called "founded" crimes. Allegations that do not warrant being categorized as crimes are called "unfounded" crimes. Brownmiller reports that the police assert that about 15 percent of the reported rapes are unfounded—that they really do not take place. It could be that the complainant was simply angry with the accused and wanted to harass him with a criminal prosecution. Another possible explanation is the police claim that some women, because of their social background and current occupations, cannot offer reliable testimony about being raped.

Subculture of Violence

This phrase was coined by Marvin E. Wolfgang and Franco Ferracutti and is discussed in the Brownmiller selection. It suggests a subculture that resorts to violence to solve problems and vent frustrations and locates it in the lower social classes. The idea suggests that while the middle and upper classes have the means to solve disputes and to soothe strained interpersonal relations in a civilized manner, the lower classes do not. Other scholars have questioned the validity of this concept. Brownmiller attributes the high rape rate to this subculture of violence, since the majority of rapes occur in the ghetto community and are committed by the same persons who resort to violence in other social situations.

FACTUAL REVIEW QUESTIONS

1. According to Short, what did Lincoln Stephens reveal in his autobiography about creating "crime waves"?

2. What do victimization surveys indicate about the actual crime rate?

3. What age group accounts for the highest proportion of arrests for violent crimes?

4. What does Short conclude is the single most important source of police mobilization?

5. According to Waldorf, how do female heroin addicts most often support their habits?

6. What are some of the factors that Hunt claims are related to being victimized by a mugger?

7. According to Miller, what are today's youth gangs most interested in?

8. Does Miller believe gang populations will increase or decrease during the next decade? What are the reasons for his predictions?

9. According to Bayley, what are the chances of a person being murdered in the United States as compared with Japan?

10. Are court sentences more severe in Japan or in the United States?

11. What are some of the social controls, identified by Bayley, that limit the crime rate in Japan?

12. According to Nelson, what has happened to women's involvement in property crimes in the last decade?

13. According to Adler, are the women who are committing crimes previously considered "masculine" part of the women's liberation movement?

14. Which is the fastest rising of the big four of violent crimes?

15. According to Amir's study, summarized by Brownmiller, are rapists more likely to operate in pairs or in groups or to operate singly?

16. Where do most rapes occur, according to the survey by the task force of the National Commission on the Causes and Prevention of Violence?

17. According to the Tappan article, approximately what percent of the convicted sex offenders are dangerous?

18. Do sex offenders have a high or a low recidivism rate?

19. According to Davis, why is the question of black self-esteem a factor in crime?

20. According to Morales, what is the impact of increased police deployment on crime rates?

ESSAY AND DISCUSSION QUESTIONS

1. **Discuss the relationship between the changing social roles of women in modern society and evolving crime patterns.**

Suggested Guidelines

1. Refer to Nelson's newspaper article.
   a. What role changes are taking place in society?
   b. What effect might these changes have on women's behavior?
   c. How will the criminal justice personnel who process female offenders be affected?
2. Refer to Adler's article, "The Rise of the Female Crook."
   a. How do role changes afford women greater opportunities to commit crimes?
   b. What is the relationship between the women's liberation movement and female criminality?

2. **Discuss the importance of social factors in generating crime in the racial ghetto.**

Suggested Guidelines

1. Examine Pinkney's newspaper article. What does he mean when he says the connection between race and crime is social?
2. Refer to the selection from the National Advisory Commission on Civil Disorders. What are some of the social conditions that help perpetuate crime in the ghetto?
3. Compare Davis' interpretation of black crime to the previous two selections. Does he believe blacks commit crimes solely to secure the material goods missing in the ghetto community or as a *reaction* against racism?

3. **Discuss why official statistics should be used with extreme caution. To what extent are they difficult to interpret, and how can they result in harmful social consequences?**

Suggested Guidelines

1. Refer to Short's newspaper article.
   a. What is the role of the press in creating crime waves?
   b. Do official statistics accurately indicate the true extent of crime in America?

2. Refer to the Brownmiller selection on rapists.
   a. How many rapes go unreported?
   b. Why is this important in attempting to provide an accurate picture of rapists and the conditions of rape?
3. Examine Pinkney's newspaper article and the Morales selection on police deployment practices in Mexican-American communities.
   a. How can racial prejudice affect arrest and conviction rates?
   b. How can the interpretation of crime statistics result in a self-fulfilling prophecy?

SUGGESTED READINGS

Articles

Burns, Haywood. "Black People and the Tyranny of American Law." *The Annals of the American Academy of Political and Social Science*, May 1973, 156–166.

Chasan, Daniel Jack. "Good Fences Make Bad Neighbors." *New York Times Magazine*, December 29, 1974, 126+.

Griffin, Susan. "Rape—The All-American Crime." *Ramparts*, September 1971, 26–35.

Lane, Roger. "Criminal Violence in America: The First Hundred Years." *The Annals of the American Academy of Political and Social Science*, January 1976, 1–13.

Simon, Rita J. "American Women and Crime." *The Annals of the American Academy of Political and Social Science*, January 1976, 31–46.

Books

Adler, Freda. *Sisters in Crime: The Rise of the New Female Criminal*. New York: McGraw-Hill, 1975.

Cameron, Mary Owen. *The Booster and the Snitch*. New York: Free Press, 1964.

Glaser, Daniel, ed. *Crime in the City*. New York: Harper & Row, 1970.

Reason, Charles E., and Jack L. Kuykendall, eds. *Race, Crime and Justice*. Pacific Palisades, Calif.: Goodyear, 1972.

Section Four

CRIMINAL LAW

NEWSPAPER ARTICLES	READER SELECTIONS
7. *The Philosophy of Criminal Law* Gertrude Ezorsky	*The Characteristics of Crime* Edwin H. Sutherland and Donald R. Cressey *Aims of Punishment* Nigel Walker *The Humanitarian Theory of Punishment* C. S. Lewis *The Capital Punishment Controversy* William O. Hochkammer Jr. *Letter from Birmingham Jail* Martin Luther King Jr.
8. *The Limits of Criminal Law: Nonvictim Crimes* John Kaplan	*Coercion to Virtue* Jerome H. Skolnick *Marijuana—The New Prohibition* John Kaplan *Consensus and Morals Legislation* Jerome H. Skolnick *The Limits of the Criminal Sanction* Herbert L. Packer *The Limits and Possibilities of the Criminal Law* Frank J. Remington
9. *Civil Liberties and Criminal Law* Judge Damon J. Keith	*The Rights of the Accused in Criminal Cases* Livingston Hall *The Police and the Supreme Court* Jerome H. Skolnick

Miranda v. *Arizona*

Discretionary Justice
Kenneth Culp Davis

Reflections on Two Models: American Criminal Procedure
Abraham S. Goldstein

LEARNING OBJECTIVES

To understand

- ☐ the moral aspects of the criminal law
- ☐ the competing philosophies of criminal punishment
- ☐ the proper scope of the criminal law
- ☐ the problems arising from overcriminalization
- ☐ the importance of procedural rights in the Anglo-American legal system
- ☐ the role of legal restraints on governmental authority
- ☐ the tension between theory and practice in the administration of justice
- ☐ the tensions that exist between controlling crime and extending civil liberties to criminal defendants

OVERVIEW

Criminal law is an important part of our social and political system for two reasons. First, it defines the boundaries of acceptable behavior in society. And second, it places limits on the exercise of governmental power by guaranteeing procedural safeguards.

If certain behavior is proscribed by the criminal law, the public is served notice that it should not engage in it. Those who do commit the illegal acts will be subject to punishment by the state, though the state does not have unbridled discretion to punish law breakers.

This section addresses three related issues in criminal law: (1) the moral principles on which criminal law and punishment should rest; (2) the proper scope of the criminal law; and (3) the manner in which persons accused of breaking the law should be dealt with in criminal proceedings.

The Philosophy of Criminal Law

Gertrude Ezorsky summarizes the first of these issues in her newspaper article titled "The Philosophy of Criminal Law." Whereas

the sociologists and criminologists writing in the previous sections were interested in explaining observed facts about crime, philosophers of criminal law are concerned with the moral principles that guide our conduct. Unfortunately, these basic moral principles have seldom been agreed upon. Currently, there are two dominant schools of philosophical thought. The utilitarians emphasize the role of deterrence and rehabilitation in criminal law because they believe the greatest good for the greatest number of people will result. The retributivists, on the other hand, contend that utilitarian principles may lead to injustice and that no person should ever be used principally as a means to an end, as an example for the rest of society.

In the Reader, Edwin H. Sutherland and Donald R. Cressey discuss the nature of the criminal law by outlining the general characteristics, or differentiae as they call them, of crime. The basic elements common to crime are transgression of a lawful statute with criminal intent and resultant harm. If there is no criminal intent, because of such circumstances as insanity, infancy, duress, and so on, then there can be no crime.

After a criminal law has been violated and a person has been justly convicted, what should be done with that person—what punishment should be inflicted? This question is debated in two Reader selections. Nigel Walker, writing for England's Royal Commission on the Penal System, believes that a secular penal system should not have retribution as an aim. Though not a strict utilitarian, Walker's primary aim is to reduce the amount of crime in society. To accomplish this end, he would use the criminal law to deter others from breaking the law. He also advocates the use of reasonable corrective or reformative measures to reduce the likelihood that an individual offender would continue to engage in illegal behavior.

C. S. Lewis disagrees with Walker's theory of punishment. Lewis contends that the humanitarian theory, as he calls it—a kind of utilitarianism—is not only potentially dangerous, but also ignores an essential element of the criminal law—*justice*.

William O. Hochkammer Jr. summarizes the debate over capital punishment—a debate that has been raging for over 150 years in the United States. During that time both those who want to abolish capital punishment and those who want to retain it have developed standard arguments on the central issues of the controversy. Each side claims to base its position on facts and hard statistical evidence; yet facts and statistics are often difficult to interpret. Consequently, much of the debate rests largely on opinion and personal values. Among the key issues of the capital punishment controversy are deterrence, discrimination, and the protection of society.

The brief excerpt by Martin Luther King Jr. shows the difficulty in applying either utilitarian or retributivist theories of punishment. What would be the appropriate punishment for someone like King, who certainly broke the law? Should he be "rehabilitated"? Should he be used as an example so that others will not commit the same offense? Perhaps the most essential question is what punishment does he *deserve* for violating unjust segregation laws? Neither philosophy of punishment is applicable to all types of offenders.

The Limits of Criminal Law

John Kaplan's newspaper article discusses another type of offender—those involved in "nonvictim" criminality. The common characteristic of this type of crime is that those involved consent to participation in the illegal activity. Thus, Kaplan prefers to call such offenses *consensual* crimes. Problems of enforcement are commonplace because such

consensual crimes as prostitution, gambling, and drug usage involve human weakness and an economic incentive toward criminality. The fact that there is a basic ambivalence toward the offense by large segments of the population exacerbates the problems of enforcement. As a result, Kaplan believes, the social and economic costs of such laws outweigh the benefits to society.

Whereas Kaplan presents a pragmatic analysis of the proper scope of the criminal law, Jerome H. Skolnick's Reader article explores some of the more theoretical aspects of the problem. In "Coercion to Virtue," he revives an old debate—should society attempt to regulate private morality through the criminal law? The primary advocate of nonregulation is John Stuart Mill, who contends that people should be allowed to do whatever they want, as long as it does not harm others. Mill's main opponent in this debate is Sir Patrick Devlin, who holds that society has a right to protect itself against the weakness and vice that often accompany private immorality.

A specific case study of the problems of regulating morality through law is presented by John Kaplan in "Marijuana—The New Prohibition." Expanding on his newspaper article, Kaplan argues that the costs of the marijuana laws outweigh the benefits. Because the use of marijuana is so widespread and is considered by so many to be socially acceptable behavior, prosecuting people who use it will only lead to general disrespect for the law. Furthermore, the marijuana laws make criminals out of a substantial percentage of the younger generation.

The laws making marijuana use and sale criminal acts are illustrative of a common occurrence in our society: When a certain form of behavior is considered undesirable by large segments of the population, a movement frequently develops to make that behavior illegal. In his next Reader selection, Skolnick examines the sociological basis of such movements and concludes that they share a common feature: Those advocating criminal sanctions feel socially threatened by what they consider to be immoral behavior. This analysis seems to apply equally well to the temperance movement of the 1920s as well as to the early 1970s. Ultimately, a conflict in social norms lies at the root of the debate about what forms of behavior should be governed by the criminal law.

On a purely philosophical level, Herbert L. Packer attempts to devise a general principle by which society can decide which forms of behavior should be proscribed by the criminal law. The rule he devises seems quite simple: The criminal law should not be concerned with any behavior that is not generally considered immoral. If there is any significant social dissent about a particular criminal statute, it should be repealed.

Though Packer's general rule may sound good in theory, it poses certain practical problems, as described by Frank J. Remington. Remington claims that there are no alternatives to the criminal law capable of dealing with such behavior as drunkenness, prostitution, and so on, and he discusses the ramifications if the criminal law were not involved.

Civil Liberties and the Criminal Law

In his newspaper article, "Civil Liberties and the Criminal Law," Judge Damon J. Keith addresses the final issue of this section: What are the legal rights of persons accused of violating the criminal law? The criminal law is not only designed to make certain acts illegal, it is also supposed to protect the accused by providing procedural safeguards. These protections are essential to individual liberties, according to Keith. This theme is elaborated in Livingston Hall's article, "The Rights of the

Accused in Criminal Cases," in which he discusses the history and importance of procedural rights in maintaining a free society. He asserts that procedural safeguards provide known rules "limiting the authority and discretion of men wielding the power of the government."

Though it is claimed that we live in a society of law, criminal justice personnel do not always comply with the laws of the land. Several Reader selections relate how law enforcement personnel actually use—or fail to use—criminal procedural protections. First, Skolnick discusses the routine operation of the police in search and seizure cases. He maintains that when constitutional safeguards hinder the apprehension of suspects, the police do what they can to appear to comply with the law, rather than allow the suspect to get away. The selection from the famous *Miranda* decision also describes some of the abusive tactics used by law enforcement personnel to secure confessions from suspects.

The police are not alone in abusing official discretion. Kenneth Culp Davis finds that the discretionary power of the American prosecutor is much too great. He is afraid that unbridled prosecutorial discretion can lead to significant improprieties.

Finally, Abraham S. Goldstein examines the tensions between the theory of due process of law and the daily practices employed to control crime. He notes that American criminal procedure has become less accusatorial and adversarial and more inquisitorial. He concludes that neither the accusatorial nor the inquisitorial system is inherently more effective in controlling crime or more fair in protecting the rights of the accused.

KEY CONCEPTS AND DEFINITIONS

Retributivist Philosophy of Punishment

The retributivist philosophy is one of the two prevailing theories about punishment that dominate American criminal law. Retributivists believe that the aim of punishment should be retribution. C. S. Lewis represents the retributivist position, stating that the severity of punishment should be based on what the offender *deserves*. This philosophy contends that an offender should *not* be used to set an example for the rest of the community, for he would thereby be a means to an end rather than an end in himself. It is further claimed that rehabilitation should not be the goal of punishment, for then the offender might not receive his just deserts. This, in Lewis' opinion, would be unjust, and *justice*, after all, is the goal of the criminal law.

Utilitarian Philosophy of Punishment

The utilitarian philosophy is the second of the two dominant theories of punishment. For utilitarians, all governmental policy should be designed to promote the greatest good for the greatest number of people. Applying this general rule specifically to the aims of punishment, utilitarians feel that both deterrence and rehabilitation should be primary goals. Deterrence will discourage *other* people from committing illegal acts, while rehabilitation will prevent the individual from repeating his crimes. Although the utilitarian philosophy of punishment could lead to injustices, Ezorsky contends that one redeeming quality is that the utilitarians at least support the admirable goal of minimizing the pains of punishment.

Reductivism

By reductivism, Walker means that punishment should function to reduce the frequency of the types of behavior prohibited by law. In other words, punitive measures should be designed to reduce the incidence of criminal behavior in society. This is a type of utilitarian thinking, and Walker advocates various deterrent and corrective measures to bring about this end.

The Humanitarian Theory of Punishment

This theory, specifically mentioned by both Walker and Lewis, is a type of utilitarianism. As described by Walker, humanitarianism refers to the "frugality" of punishment—meaning that humanitarians would like to minimize punishment. This theory was in part the basis of many of the indeterminate sentencing laws that were passed at the turn of this century. Lewis notes, however, that there has in practice been no minimization of punishment. Open-ended rehabilitative sentences have often meant *more* punishment, not less. Since the punishment is based on the individual needs of the offender, a person who commits a relatively minor offense may remain in prison much longer than he deserves. Lewis also finds a flaw in the humanitarian theory, in that it does not sufficiently consider the ends of justice. Justice, believes Lewis, should not be ignored in any theory of punishment.

Mens rea

There are two basic elements to a crime: the criminal act and criminal intent, or *mens rea*. If either of these two elements is absent, there can usually be no crime. *Mens rea*, literally translated as the "guilty mind," is required before someone can be found guilty of committing a crime because our system of criminal law is based on free will. Thus, if an act is committed against a person's will or in the absence of his will, then there is no crime. There are, however, certain conditions that can negate criminal intent, such as insanity, idiocy, infancy, and duress.

Strict Liability Crimes

Although *mens rea* is generally a requisite for crime, there are some exceptions. The most notable exception, mentioned by Sutherland and Cressey, is that category of offenses called strict liability crimes. These are offenses for which criminal intent need not be present in order for there to be a crime. Strict liability crimes are usually minor offenses, such as traffic violations. For example, if you break the law by not stopping at a stop sign that you did not notice, you are still held legally responsible for your action.

Mala in se and *mala prohibita*

Traditionally, there are two classes of crimes in Anglo-American law: *mala in se* and *mala prohibita*. *Mala in se* crimes are those that are inherently bad, such as murder, rape, robbery, kidnap, and the other common law felonies. *Mala prohibita* refers to crimes that are not evil by their very nature, but have simply been made illegal by an act of a legislature. Skolnick mentions in his Reader selection, "Consensus and Morals Legislation," that almost everyone agrees on what constitutes *mala in se* offenses. There is, however, no such agreement in a pluralistic society over certain *mala prohibita* offenses, such as nonvictim crimes, and their inclusion in the criminal law.

Bill of Rights

The Bill of Rights is made up of the first ten amendments to the Constitution. It provides certain privileges and protections against governmental interference. Originally, the Bill of Rights applied only to federal law. After the

passage of the Fourteenth Amendment, however, the Supreme Court determined that these same rights would apply to *state* proceedings. This decision by the Supreme Court has led to a great deal of controversy because the federal government can now virtually dictate the proper rules of criminal procedure to state officials. State governments often find this power intrusive and contend that the Supreme Court should allow local criminal justice officials to arrest and prosecute offenders as they see fit.

Exclusionary Rule

Police have often abused their discretion in obtaining evidence for trial. In order to control the excesses of police authority, the Supreme Court instituted the exclusionary rule, which holds that unconstitutionally obtained evidence will be excluded from trial. For example, evidence secured in an unconstitutional search or seizure cannot be used in court. Critics have claimed that the exclusionary rule hampers law enforcement officials in performing their duties and harms society by releasing dangerous criminals simply because the police exceeded their authority. Although these criticisms may be valid, no other method has been devised to effectively reduce police misbehavior.

Writ of Habeas Corpus

The writ of habeas corpus (literally means "you have the body") originated centuries ago in England when the king's government imprisoned political opponents who had never been convicted of a crime. To prevent this abuse of power, the writ of habeas corpus was devised to force the king's representatives to show under what authority the prisoner was being held captive. Today, the writ of habeas corpus is used to seek the release of unlawfully imprisoned inmates. Persons confined in jail or prison ask the court to determine if they have been imprisoned without due process of law.

FACTUAL REVIEW QUESTIONS

1. According to Ezorsky, what are the central principles of the "utilitarians" and the "retributivists"?
2. What is Kant's "principle of humanity"?
3. What do Sutherland and Cressey mean by "conduct"?
4. What are the two major exceptions to the seven differentiae of crime?
5. According to Walker, what is "Montero's aim"?
6. What does Walker mean by "reductivism"?
7. What inference can be drawn from the statistics comparing the number of females and the number of males executed between 1930 and 1962?

8. What do available studies indicate about the deterrent effect of capital punishment?

9. Why does King feel it is justifiable to disobey certain laws?

10. What, according to King, do segregation laws do to the human personality?

11. Why does Kaplan prefer the term "consensual crimes" to "nonvictim crimes"?

12. Under what conditions do consensual crimes cause the greatest problems for society?

13. According to Kaplan, what are the prototypical nonvictim crimes of today?

14. According to Kaplan's Reader selection, how should the wisdom of the law be determined?

15. According to Kaplan, what accounts for most of the costs of enforcing the marijuana laws?

16. What are the central issues in the Mill-Devlin debate, as summarized in Skolnick's "Coercion to Virtue"?

17. What does Packer mean by the "prudential limitation" on the criminal sanction?

18. According to Skolnick's second Reader selection, what is a "moral entrepreneur"?

19. What was the Supreme Court's basic holding in the *Miranda* case?

20. As stated in the *Miranda* case, what did the Commission on Civil Rights (1961) discover about police misbehavior?

21. Are the modern practices of in-custody interrogation psychologically or physically oriented, according to the *Miranda* case?

22. What evidence does Davis cite to contradict the assumption by American prosecutors that their discretionary power must be uncontrolled?

23. What are Packer's two models of criminal procedure?

24. According to Goldstein, what model of the criminal process does Packer *not* consider?

25. What is the chief characteristic of an inquisitorial system of criminal procedure?

ESSAY AND DISCUSSION QUESTIONS

1. Discuss the relative merits of the utilitarian and retributivist philosophies of punishment.

Suggested Guidelines

1. Refer to Ezorsky's newspaper article. What are the basic tenets of each philosophy?
2. Examine the Walker selection.
   a. Should a modern penal system have a retributive aim?
   b. What penal measures should properly be used to reduce the frequency of illegal behavior?
3. Consult Lewis' article, "The Humanitarian Theory of Punishment."
   a. What dangers does he see in this theory of punishment?
   b. What is and should be, according to Lewis, the role of justice in any system of punishment?

2. Discuss the difficulties in accurately defining the proper scope of the criminal law.

Suggested Guidelines

1. Refer to Kaplan's newspaper article. How do consensual crimes create problems for law enforcement?
2. Analyze Skolnick's Reader selection "Coercion to Virtue." What are the respective positions of John Stuart Mill and Sir Patrick Devlin?
3. Refer to Kaplan's Reader selection, "Marijuana—The New Prohibition." How does he suggest the wisdom of the law be measured?
4. Consult the Packer article. What is his general rule for setting the limits of the criminal sanction?
5. Look at Remington's article. How would he answer Packer? Who will deal with victimless crimes if not the criminal justice system?

3. **Discuss the conflicts that exist between the constitutional ideals of law designed to protect criminal defendants and the everyday efforts to control crime by criminal justice personnel.**

Suggested Guidelines

1. Refer to the newspaper article by Judge Keith and the Reader selection by Hall. What are the procedural safeguards guaranteed defendants by the Constitution?
2. Examine the Skolnick selection on search and seizure practices. Do the police actually comply with the constitutional requirements? Why?
3. According to the *Miranda* decision, what sorts of measures do police resort to in order to secure confessions from criminal defendants?
4. Analyze the Goldstein selection. What does he have to say about historical changes in our country and their impact on procedural protections?

SUGGESTED READINGS

Articles

Hart, Henry M., Jr. "The Aims of the Criminal Law." *Law and Contemporary Problems* 23 (1958), 401–411.

Kadish, Sanford. "The Crisis of Overcriminalization." *The Annals of the American Academy of Political and Social Science*, November 1967, 157–170.

Morris, Norval. "Crimes Without Victims: The Law Is a Busybody." *New York Times Magazine*, April 1, 1973, 4+.

Packer, Herbert L. "Two Models of the Criminal Process." *University of Pennsylvania Law Review* 113 (1964), 1–68.

Smith, Alexander B., and Harriet Pollack. "Less, Not More: Police, Courts, Prisons." *Federal Probation*, September 1972, 12–18.

Books

Duster, Troy. *The Legislation of Morality*. New York: Free Press, 1970.

Lewis, Anthony. *Gideon's Trumpet*. New York: Vintage Books, 1966.

Pound, Roscoe. *An Introduction to the Philosophy of Law*. New Haven, Conn.: Yale University Press, 1954.

Schur, Edwin M. *Crimes Without Victims*. Englewood Cliffs, N.J.: Prentice-Hall, 1965.

Section Five

THE ADMINISTRATION OF CRIMINAL JUSTICE

NEWSPAPER ARTICLES	READER SELECTIONS
10. *Police: Law Enforcement in a Free Society* Jerome H. Skolnick	*Patrick Murphy on Police Corruption: An Interview* Frederick O'R. Hayes *Why Police Behave the Way They Do* Jerome H. Skolnick *Forces of Order* David H. Bayley *Urban Crisis Makes Police Vulnerable—And Angry* Michael Serrill
11. *Pretrial Detention: Bail or Jail* Caleb Foote	*Jails: The Ultimate Ghetto* Ronald Goldfarb *Purveyors of Freedom: The Professional Bondsmen* Paul B. Wice *Judge Wright* Fred C. Shapiro *On Preventive Detention* Alan M. Dershowitz
12. *Plea Bargaining and Sentencing* Alan M. Dershowitz	*Justice by Consent* Arthur Rosett and Donald R. Cressey *Justice in Philadelphia* James Steele and Donald Barlett *Criminal Sentences: Law Without Order* Marvin E. Frankel *Criminal Sentencing in the United States: An Overview* Alan M. Dershowitz

LEARNING OBJECTIVES

To understand

- ☐ the routine practices and procedures in the administration of criminal justice
- ☐ the organizational pressures affecting the behavior of criminal justice personnel
- ☐ the influence of the social context on the effectiveness of criminal justice
- ☐ the use and abuse of official discretion in the criminal justice system
- ☐ the tensions existing between the ideals of law and the actual administration of justice

OVERVIEW

Criminal justice personnel perform their duties under the authority of broad constitutional principles and legal ideals. Yet their routine behavior is seldom subject to official scrutiny or to the rule of law. Inevitably, the behavior of those involved in administering criminal justice is influenced by both organizational pressures and the social context in which they operate. These situational pressures frequently prevent them from achieving high legal ideals. The problem is particularly acute because of the broad discretion involved at all stages of the criminal justice system, from the police officer who observes or investigates a crime through the sentencing judge and parole board. Thus, there are many points at which these situational pressures can affect the kind of justice dispensed.

This section discusses some of the problems and procedures in the actual administration of criminal justice. The components of the system to be studied are the police, pretrial detention, and plea bargaining and sentencing.

Police

Jerome H. Skolnick discusses the problems of policing a free and pluralistic society in his newspaper article. He traces the history of the police back to England, noting that most Englishmen were originally apprehensive about initiating a municipal police force. The problem faced by England at that time is the same problem facing America today: How can governmental power be reconciled with individual freedom? Skolnick also mentions some of the specific problems that have plagued the police in America, such as the lack of community support, the challenge of racial outbursts, and the increase in corruption that has permeated police structure and organization.

The police corruption referred to by Skolnick is further discussed in the interview with former New York City Police Commissioner Patrick Murphy. Murphy blames much of the police corruption on the organizational make-up of the police department, such as the enormous discretion enjoyed by each patrolman. He concludes that one of the major causes of police corruption is the lack of accountability within the police organization, thus emphasizing one of Skolnick's major themes.

Skolnick's Reader selection, "Why Police Behave the Way They Do," mentions several important characteristics of the occupational role of the police officer. Expanding on his

newspaper theme of police culture, Skolnick notes that three factors—danger, authority, and efficiency—combine to shape the world view of the police officer. His behavior is also influenced by the way others react to him as a police officer. A sense of isolation and suspicion of others seems to develop, along with an overriding belief that he does not receive the proper respect from the people he protects.

The relationship between the police and the general public's perception about the police can be viewed as a product of a particular social context—the values and patterns of the society at large. The role of social context can best be understood through a comparative analysis of the police in the United States and elsewhere, an approach used by David H. Bayley in "Forces of Order." He compares the situation in Japan, where the police command considerable respect and are viewed as sources of authority, with that in the United States, where that prestige is not shared.

Michael Serrill's Reader selection confirms this difference by discussing the current American attitudes toward the police. Though many of the policeman's perceptions about how little he is appreciated by the public are intangible, some concrete evidence is reported by Serrill. He cites the examples of communities that dismiss police officers rather than raise the tax rate. Many officers are personally upset by such attitudes and feel increasingly that theirs is a thankless job.

Pretrial Detention

Once a police officer has made an arrest, the suspect is confronted with the system of pretrial detention, the second criminal justice component to be dealt with in this section.

Caleb Foote, in his newspaper article, documents the inequalities in pretrial procedures. Those persons who can afford to buy their freedom through bail or bond are free to prepare their defense against the charges. Indigent defendants, on the other hand, must remain in jail pending trial. Foote claims that this inequality is a violation of the doctrine of equal protection under the law, since freedom under this system depends on one's economic status rather than on his guilt or innocence. Ronald Goldfarb also briefly discusses the discriminatory aspects of the American bail system.

One of the ironies of justice noted by Foote is that if a person is found guilty, he may be sent to a more humane institution than that in which he was confined prior to being found guilty. The jails used for pretrial detention are notoriously unpleasant places, as characterized by Goldfarb in his article, "The Ultimate Ghetto."

The bondsman, who aids the pretrial detainee in purchasing his freedom, is discussed by Paul B. Wice. Wice mentions the stereotyped images of bondsmen and finds them incorrect, since he has encountered a varied group of people practicing this profession. Though many bondsmen are engaged in illegal practices, the primary concern of many of them at this time is to survive the reform of the bail system, which would greatly reduce the number of cases for which a bond has to be posted, thus leaving many bail bondsmen unemployed.

The story of the black judge in New York City, mentioned in Foote's article, is discussed in more detail by Fred C. Shapiro in the Reader. Judge Wright's case is interesting because it illustrates what happens to a person who upholds the constitutional mandate *not* to impose excessive bail. His practice of releasing many defendants on their own recognizance or on a small amount of bail drew severe criticism from the police, the district attorney, the press, and finally his fellow judges. Yet, Wright insists, he was merely

trying to apply the law in such a way as to eliminate discrimination—the same kind of discrimination discussed by Foote and Goldfarb. In addition, Wright firmly believes that the bail system should not be used for preventive detention.

In his first Reader selection, Alan M. Dershowitz summarizes the controversy surrounding this issue of preventive detention. Whether or not to release a potentially violent offender pending trial is one of the most difficult decisions a judge has to make. Obviously, he does not want violent criminals free to commit more crimes. At the same time, he does not want to punish anyone with imprisonment *before* he is found guilty. This judicial decision is made more difficult by the fact that there are currently no adequate techniques to predict the future behavior of pretrial detainees.

Plea Bargaining and Sentencing

The sentencing process itself is so dominated by the use of discretion that Dershowitz, in his newspaper article, describes it as *lawless*. There are simply no sufficient guidelines governing one of the most important decisions in the criminal justice process. This unbridled discretion can result in several undesirable consequences, the most notable of which is the enormous disparity in criminal sentences. He concludes his article on a note of optimism, asserting that, at least for the time being, criminal sentences will become more determinate and less discretionary.

Arthur Rosett and Donald Cressey in their Reader article discuss one aspect of the sentencing process mentioned by Dershowitz—plea bargaining. They, too, note that much "justice" takes place behind the scenes through negotiations, and that plea bargaining is a visible symbol of discretionary justice in America. But they conclude, contrary to several governmental commissions, that abolishing plea bargaining would do more harm than good.

A case study, "Justice in Philadelphia," is reported by James Steele and Donald Barlett. It is an empirical study of the effects of discretion on the sentencing process. They found that there is substantial disparity in sentencing, as well as outright racial discrimination. Though there are several factors they blame for this situation, at its core is the excessive discretion given to judges.

Judge Marvin E. Frankel also discusses the broad discretion placed in the hands of American judges in the sentencing process. Sentencing laws are so open-ended that Frankel calls them "law without order." He feels that for a society that claims to be governed by laws and not men, this unbridled discretion is intolerable. It leads to a "wild array of sentencing judgments," which, of course, results in injustice.

In the final selection, Dershowitz presents an overview of the history of criminal sentencing in this country. America's earliest sentencing procedures were banishment and punishment, both corporal and capital. The philosophy of punishment then shifted to the rehabilitation of the offender and the use of the indeterminate sentence. We are now witnessing a loss of faith in the rehabilitative ideal and a return to a deterministic model of sentencing that would limit the authority and discretion of the judge and the parole board.

Sting Operations

The police have never been particularly successful in apprehending street criminals and thieves. The arrest rate of street criminals represents a small percentage of the total number involved in street crimes. Recently, however, the police have employed tactics that have been more fruitful. With the aid of the Law Enforcement Assistance Administration (LEAA), local law enforcement agencies have engaged in undercover operations in which police officers pose as "fences" who buy stolen property and other illegally obtained goods from street criminals. The undercover officers videotape the transactions with the criminals so that there is documented proof of the crime. This sort of evidence proves more convincing than the memory of the arresting officer in a regular street arrest. When sufficient evidence has been gathered to secure a large number of convictions, the undercover officers reveal their identities and "sting" (arrest) the offenders.

Police Malpractice

A variety of misconduct is included in the concept of police malpractice. Some forms, such as corruption, are motivated by a desire for personal gain. Other forms include excessive use of force, perjury, illegal searches and seizures, entrapment, and the planting of evidence. These often result from police culture—feelings of group loyalty—or from the desire to appear efficient or to establish authority. Sometimes, as Skolnick pointed out in the last section, police malpractice results from confusion about the actual status of the law, as interpreted by the courts.

Civilianization

Because of the high costs of training and employing uniformed police officers, many cities are using civilians to perform many of the tasks formerly handled by the police. Jobs currently being held by civilians range from "meter maids" and traffic directors to telephone operators and dispatchers. Civilianization has generally been unpopular with police officers, who do not feel that civilians can handle the jobs adequately and who feel their own jobs threatened.

Release on Own Recognizance (OR)

As Foote discussed in his newspaper article, the bail system in the United States discriminates on economic grounds. People with money can buy their freedom, or post bail, before trial, while those without sufficient funds must remain in jail. Because of the obvious discriminatory nature of the bail system, there have been efforts at reform. One of the first attempts was started in 1961 by the Vera Institute of New York. Called the Manhattan Bail Project, its function was to gather social background information on pretrial detainees to convince the court that many of these persons could be set free without bail and would appear at the designated time for trial. The project volunteers developed a set of standard criteria based on a point system, which would allow those with the required number of points to be released without bail, that is, released on their own recognizance (OR). The courts were generally cooperative, and the results showed that, in general, people released on their own recognizance did not flee from prosecution with any greater frequency than did those released on bail. Since the project was completed, many cities across the country have instituted OR projects to release indigent defendants who are considered good risks. In addition, the Bail Reform Act of 1966

provides for such release for most persons accused of federal crimes.

Preventive Detention

It is a basic principle of American law that no person should be punished by confinement (or any other means) unless he has been found guilty of violating a criminal statute. There are, however, conditions under which some people in this country can be involuntarily confined though they have never been convicted of a crime. Mental patients, for example, can be detained for "treatment" in a mental institution, and persons awaiting trial who cannot post the necessary bond must remain in jail. The newest form of confinement before conviction is preventive detention, which is the involuntary incarceration of a person on the assumption that he *might* commit a crime if released from custody. Preventive detention rests on the assumption that there are means to predict accurately who will or will not commit crimes if set free. There are, as Dershowitz points out, no such techniques.

The bail system has frequently functioned in the past as an informal (and illegal) system of preventive detention whenever the judge set bail at a level he knew that the defendant could not meet. More recently, there have been direct efforts by various legislatures to pass preventive detention laws to make such confinement legal. If that comes to pass, the courts will inevitably detain persons who are innocent of any crimes charged against them and who would not have committed new crimes if set free. According to our basic principles of criminal punishment, this would amount to a grave injustice.

Plea Bargaining

On television or in the movies, most criminal cases climax in a trial involving articulate attorneys arguing their cases in front of a jury. In actuality, this happens rarely in the American system of criminal justice. Most criminal cases do not go to trial at all but are plea bargained. Plea bargaining is the process through which a defendant agrees to plead guilty in exchange for certain concessions from the prosecutor. Depending on the sentencing structure of the jurisdiction, there are a variety of things the prosecution and defense attorneys can bargain over, such as the nature or number of the charges or the length and quality of incarceration.

It is claimed that plea bargaining benefits all concerned. The defendant gets a lighter sentence than he might otherwise expect, the district attorney secures another conviction, and the courts are not overburdened with cases. Others feel that plea bargaining is detrimental to the entire system of criminal justice because defendants relinquish their constitutional rights to a jury trial, and, therefore, the community does not receive the justice it deserves.

Indeterminate Sentence

Before the turn of the century, a judge could sentence an offender to prison only for a period of time specified by statute. With the exception of good-time credits or a possible pardon, the prisoner knew that he would be incarcerated for the amount of time designated by the judge. This type of sentencing structure is called determinate sentencing because the time in prison is determined by the judge in court.

With the rise of the rehabilitative ideal, prisons became places where offenders were to be reformed rather than punished. It was assumed, however, that some inmates would be rehabilitated faster than others, and that the judge could not possibly know how long this process would take. Sentencing would have to be individualized to fit the needs of the

criminal. An indeterminate sentencing structure evolved in which the judge merely sentenced the offender to prison and let an administrative board, such as a parole board, determine the exact length of the prisoner's confinement. With such a system, the offender was at the mercy of the parole board. This uncertainty about the amount of time to be served is blamed for a great deal of the inmates' anxiety because so much discretionary power rested in the hands of the parole board. The indeterminate sentence and the way it was administered may have also contributed to the prison unrest that has occurred over the last decade. For these reasons, we are now witnessing the demise of the indeterminate sentence and a return to determinate sentencing.

Mandatory Minimum Sentencing and Flat-Time Sentencing

A number of reforms aimed at correcting the wide disparity in criminal sentencing are currently under consideration by state legislatures and Congress. These include mandatory minimum sentencing and flat-time sentencing. Under mandatory minimum sentencing, a judge is required to impose a certain minimum sentence for a specific offense, thus reducing somewhat judicial discretion. Under flat-time sentencing, the judge retains discretion to impose sentence from a wide range of alternatives, but the parole board cannot release the inmate before the expiration of his term (less time off for good behavior).

Presumptive Sentencing

Another approach toward more determinate sentencing is presumptive sentencing. Under this approach, the legislature determines what it considers an appropriate sentence for a "typical" first offender for a "typical" instance of a crime. This sentence then becomes the presumptive sentence for this crime, that is, there is a presumption that this sentence will automatically be given under similar circumstances. Any departure from the presumptive sentence must be justified in writing by the sentencing judge and can automatically be appealed.

FACTUAL REVIEW QUESTIONS

1. Approximately when was the first formal police department instituted in an English-speaking country?
2. How could one distinguish the early British police from the army?
3. Approximately what percent of the patrolman's time is spent on crime-related activities?
4. According to the Skolnick newspaper article, what is the difference between police corruption and malpractice?
5. What was the principal finding of the Knapp Commission in 1972?
6. What did Murphy view as the basic cause of police corruption when he became police commissioner of New York City?
7. Why have "sting" operations been highly praised by many people?
8. According to Skolnick, what three job-related factors shape the police officer's behavior?
9. According to Bayley, why is it important to study the experiences of foreign police departments?
10. What does Bayley believe is the greatest impediment to change in the American police?
11. According to Serrill, what are two accomplishments of the civilian planners and analysts now assisting police departments?
12. According to Foote, what is the usual effect on sentencing—if any—of the detention of a defendant because of inability to post bail?
13. What does Goldfarb claim is the predominant composition of the jail population and what percent of the inmates are pretrial detainees?
14. According to Goldfarb, what is the only lawful purpose for bail?
15. What percent of arrestees held in jail were never convicted of a crime, according to a study quoted by Goldfarb?
16. How did the American bail system develop?

17. What is the role of the bail bondsman?

18. What is Judge Wright's view on preventive detention?

19. What does Dershowitz claim is the most widespread form of preventive detention in the United States?

20. What does Dershowitz mean by "preventive arrest"?

21. According to the study reported by Steele and Barlett, what are the two kinds of justice in Philadelphia?

22. According to Dershowitz, what were the primary mechanisms of sentencing in the colonial period?

23. What was the role of Zebulon R. Brockway in the history of sentencing?

24. What is the dominant sentencing structure in the United States today?

25. What are the three sentencing models described by Dershowitz in the last Reader selection?

ESSAY AND DISCUSSION QUESTIONS

1. **How do organizational pressures and social context influence police behavior?**

Suggested Guidelines

1. Refer to Skolnick's newspaper article.
   a. What are some of the differences between the American and British police experiences?
   b. How does "police culture" affect police behavior?
2. Examine the interview with former police commissioner Murphy. How did the lack of organizational accountability affect police corruption?
3. Review the Reader selection by Skolnick. How does the social situation in which the police officer must work influence his view of the world?
4. Refer to Bayley's Reader selection. How does the difference in social context between Japan and the United States account for their differing police institutions?

2. **Discuss the effects of official discretion on the dispensation of justice in America.**

Suggested Guidelines

1. Refer to Skolnick's newspaper article on the police.
   a. Why do the police departments employ considerable discretion?
   b. In what ways do the police use their discretion?
2. Review the article by Davis in Section Four. In his view, how does the discretion exercised by prosecutors affect justice?
3. Review the newspaper article on sentencing by Dershowitz.
   a. Why does he say the process of imposing sentence is essentially lawless?
   b. What evidence does he present concerning disparity in sentences?
4. Refer to the Reader selections by Frankel and Steele and Barlett. What data do they offer concerning the misuse of judicial discretion?

3. **To what extent is the ideal of "equal justice under the law" achieved in the everyday administration of justice in America?**

Suggested Guidelines

1. Refer to Foote's newspaper article, "Pretrial Detention." What does he think should be the ideal of equal justice in pretrial release procedures?
2. Examine the Reader selections by Goldfarb and Shapiro. What do these authors indicate about the actual practice of setting bail and pretrial detention?
3. Consult the Reader selection by Steele and Barlett.
   a. According to them, is equal justice being dispensed in Philadelphia?
   b. What characteristics of defendants seem to be important in the sentencing process?
4. Review Dershowitz's newspaper article on sentencing. What does he say about discrimination in the sentencing process?

SUGGESTED READINGS

Articles

Dean, James M. "The Illegitimacy of Plea Bargaining." *Federal Probation*, September 1974, 18–23.

McGee, Richard M. "Our Sick Jails." *Federal Probation* 35: 1 (1971), 3–8.

Piliavan, Irving, and Scott Briar. "Police Encounters with Juveniles." *The American Journal of Sociology* 70 (1964), 206–213.

Reich, Charles A. "Police Questioning of Law-Abiding Citizens." *Yale Law Journal* 75 (1966), 244–251.

Wilson, James Q. "Do the Police Prevent Crime?" *New York Times Magazine*, October 6, 1974, 2+.

Books

Albrecht, Mary Ellen, with Barbara Lang Stern. *The Making of a Woman Cop*. New York: William Morrow, 1976.

Blumberg, Abraham S. *Criminal Justice*. Chicago: Quadrangle, 1967.

Gaylin, Willard. *Partial Justice: A Study of Bias in Sentencing*. New York: Knopf, 1974.

Goldstein, Herman. *Policing a Free Society*. Cambridge, Mass.: Ballinger, 1977.

Wambaugh, Joseph. *The New Centurions*. New York: Dell, 1970.

Section Six

PUNISHMENT

NEWSPAPER ARTICLES	READER SELECTIONS
13. *Punishment: A Historical Perspective* David J. Rothman	*A Look at Prison History* Thorsten Sellin *Correction in the Eighteenth Century* David J. Rothman *On the Penitentiary System in the United States* Gustave de Beaumont and Alexis de Tocqueville *The Evolution of the New York Prison System* New York State Special Commission on Attica
14. *The Prison Community* John Irwin	*Inmate Society* Richard McCleery *The Felon* John Irwin *War Behind Walls* Edward Bunker *The Forgotten Offender: The Woman in Prison* Rita James Simon
15. *The Future of Punishment* Sheldon L. Messinger	*What Works? Questions and Answers About Prison Reform* Robert Martinson *Of Prisons, Asylums, and Other Decaying Institutions* David J. Rothman *Prison Population Hits All-Time High* Corrections Magazine

New Broom on the Cellblock
John M. Baer

Directions for Corrections
Leslie T. Wilkins

LEARNING OBJECTIVES

To understand

- ☐ the role of punishment in American society
- ☐ the historical origins of current methods of punishment
- ☐ the range of penal measures used to control crime
- ☐ the transformation of the inmate social system
- ☐ the current state of American prisons
- ☐ the future trends in punishment
- ☐ the role of values in choosing penal measures

OVERVIEW

Methods and philosophies of punishment have changed drastically over the course of American history. Many of the penal measures have been replaced by methods that bear little resemblance to those of earlier times. This last section deals with the culmination of the crime and criminal justice process—the punishment of the offender. It will trace the history of punishment, examine the prison community, and speculate about the future of punishment.

Punishment

David J. Rothman's newspaper article, "Punishment: A Historical Perspective," outlines the penal measures used in America from colonial times to the present. In the colonial period, penal measures were characterized by a lack of mid-range punishments, with either minor or extreme sanctions employed to control criminal behavior. With the rise of the rehabilitative ideal, incarceration was introduced into American society.

Though its proponents were optimistic about its reformative powers, incarceration did not fulfill early expectations. Instead, prisons became brutal and counterproductive institutions. Disillusioned with rehabilitation, many reformers are currently advocating a return to simple, direct punishment through the use of short but determinate sentences. Though Rothman does not speculate about what punishments will work in the future, his historical analysis shows that there have been

alternatives to incarceration. It also grants us an opportunity to examine our values and the manner in which they should be expressed in terms of punishment.

Thorsten Sellin, in "A Look at Prison History," traces the origins of punishment and incarceration to an even earlier period. Sellin states that most of our penal measures, including incarceration, were originally used on slaves. Most members of the upper classes settled their grievances with personal feuds and economic compensation. Since slaves could not pay for their crimes, they were subjected to a variety of harsh punishments. Gradually, slave punishments were extended by law to apply to all persons. Though all citizens are guaranteed equal justice under the law, it is apparent that to this day there are two systems of justice in the United States: the civil courts for most white-collar and corporate criminals, and the criminal courts and prison for the lowest classes in society.

Rothman elaborates his ideas about punishment in colonial America in his Reader selection. Imprisonment was not used extensively during that period, except for persons awaiting trial. Many penal measures were direct and often harsh, such as whipping and branding. Banishment was also used, with the purpose of isolating the community from immoral people.

When incarceration was first used as punishment in the United States, the results seemed encouraging. People from other countries came to study it and explore the possibility of establishing similar prisons in their own countries. Such was the case with Gustave de Beaumont and Alexis de Tocqueville, who came from France in the early 1830s to study the American prison system. In their Reader selection, they describe the two prison systems they found here—the Auburn and the Pennsylvania systems, both aimed at reforming the inmates—and the benefits and the liabilities of each.

Of these two prison systems, the Auburn model has survived, though contemporary prisons resemble the original primarily in terms of structure. The Reader selection on Attica, an institution that is an example of the Auburn system of the early 1800s, describes the development of the New York prison system and emphasizes how limited the changes in the prison system have been compared to the radical changes in the social world.

The Prison Community

Not only has the ideology of punishment changed over the years, but the activities of the prison community have changed as well. John Irwin discusses this evolution in his newspaper article, "The Prison Community." He relates how the inmate culture originally developed and describes the expectations placed on the inmates to cooperate, do their own time, and follow the inmate code.

In the post-World War II period, the inmate culture has taken two different identities. At first, revolutionary activities became increasingly popular through the 1960s. Most recently, the inmate culture has been divided into subcultures based primarily on racial grounds, which has frequently resulted in intense racial conflicts.

The Reader selection by Richard McCleery outlines the values of the inmate social system inside the type of prison called the "big house." This system was based primarily on the coercive power of the toughest inmates as well as the guards. One of the basic tenets of this code was to do one's own time without engaging in conduct that would incur the wrath of the prison guards.

In his Reader selection from *The Felon*, John Irwin expands his views on the decline of rehabilitation. Specifically referring to the

California prison system, he describes how inmate attitudes have shifted from a feeling of optimism to one of disillusionment about rehabilitation. Not only is there a sense of injustice among the inmates because the indeterminate sentence results in sentencing disparity, but there is little or no evidence of effective treatment, educational improvement, or vocational training.

Edward Bunker provides the most recent glimpse of the "war behind walls." His is a vivid description of the racial tensions and potential violence in America's prisons today.

Such tensions have kept men's prisons in the public eye. The woman inmate, however, has become "the forgotten offender," according to Rita James Simon's article. Since there are relatively few women sent to prison and those imprisoned cause considerably fewer problems than male inmates, they have been largely neglected by criminologists, the press, and the general public. Simon discusses several important and complex issues concerning the future of women in prison. Should they have access to the same programs as male prisoners? Should they be subject to the same degree of punishment for comparable crimes? Simon would like to see *more* equality between the sexes in prison, particularly in terms of more vocational training programs for women.

The Future of Punishment

Sheldon L. Messinger's newspaper article, "The Future of Punishment," summarizes the most recent trends. He points out that there are a wide variety of sanctioning alternatives available in the United States, and he predicts there will be changes in both the nature and extent of punishment. First, there will be more offenders under some form of state surveillance, primarily through the use of diversion programs. At the same time, there will be conventional punishment for a larger proportion of offenders. With less emphasis placed on rehabilitation and with the rise of the determinate sentence, more offenders will be subject to some form of imprisonment, though probably for shorter periods of time. Messinger concludes that the new penal measures will be as troublesome as those that have been tried in the past.

Robert Martinson attempts to answer the question "what works?" in his Reader selection. He comes to the depressing conclusion that the years of effort to rehabilitate prisoners have produced few successes—nothing seems to work to reduce the recidivism rate. He suggests that we think about changing the goal of punishment to deterrence, though he acknowledges that not much is known about its effectiveness.

The population trends in America's penal institutions are currently being debated by experts. Some people believe that we will witness a period of decarceration in which fewer people will be placed in massive state penal institutions. David Rothman is of this belief. In his Reader selection, "Of Prisons, Asylums, and Other Decaying Institutions," he maintains that we, as a society, are rejecting incarceration as a viable penal measure. He further recommends that this deinstitutionalization continue, since prisons are ineffective, costly, and inhumane.

Others claim that the prison population will increase in the future. The statistics from the *Corrections Magazine* survey, reprinted in the Reader, seem to support this view.

The article by John M. Baer discusses the possible directions of *juvenile* justice, as he describes the debate in juvenile corrections about the extent to which decarceration should take place. The focus of Baer's article is Jerome Miller, a proponent of decarceration. Miller, as the head of juvenile corrections in

several states, has closed down many large juvenile institutions. His actions have aroused controversy because, while he wants to remove juveniles from institutions, others feel that today's youth are becoming increasingly violent and should be treated more like adults.

Leslie T. Wilkins' article concludes the readings on the future of punishment. Despite what others have said about the decline of penal institutions, Wilkins maintains that some form of prison will be needed in the United States for a long time to punish law breakers and to separate dangerous offenders from the rest of society.

KEY CONCEPTS AND DEFINITIONS

Rehabilitation (see also p. 6)

Rothman points out in his newspaper article that our forefathers relied primarily on punishment (corporal and capital) and banishment to rid their communities of crime and deviance. Crime was viewed in *moral* terms, and punishments were prescribed to correspond to the wrongfulness of the act. In the 1800s, the philosophy of punishment changed and crime was considered a result of faulty social organization. The inmate could be rehabilitated by isolating him from corrupt influences and instilling proper habits. In the twentieth century, crime was increasingly regarded as a disease to be cured. One result of this philosophy was the indeterminate sentence, which was devised because all criminals would certainly not be "cured" in the same length of time.

Over the last century, numerous attempts have been made to rehabilitate offenders through various programs. According to the Martinson article, however, rehabilitation has failed—both in the opinion of the offenders and by any scientific evaluation. At this point, the age of rehabilitation appears to be almost over. Most prison systems will probably deemphasize rehabilitation, and the offender will be sentenced to a relatively standard period of time, depending on the gravity of his offense. Treatment and vocational programs will probably also be offered to inmates on a voluntary basis.

Penitentiary

Prisons and jails as we know them today have not always existed. In colonial times there were no prisons at all, and jails were used only for pretrial detention, not for punishing persons convicted of crime. In conjunction with the efforts to rehabilitate offenders, large-scale institutions were erected because it was felt that crime was caused by a bad environment. If criminals were placed in a good, controlled environment, they could then be reformed.

The penal institutions were first labeled penitentiaries because the inmates were supposed to do penance there. Gradually, two systems of penitentiaries developed in the early 1800s—the Auburn and the Pennsylvania systems. Eventually, the Pennsylvania system became extinct, and the Auburn system was adopted throughout the country. Most of the large American prisons today resemble the early nineteenth-century Auburn model, including the Attica facility in New York, which was built some 130 years after the original.

Community Corrections

Recently, there has been a growing interest

in reducing or replacing the large-scale penal institutions. This movement for deinstitutionalization is based on the assumption that rehabilitation does not work and that the more time prisoners spend in prison, the more "institutionalized" they become, making it increasingly difficult for them to function in the outside world. The corollary to this is that prisoners (and mental patients) would benefit, in terms of treatment and socialization, if they remained in the community during their sentence. There is increasing emphasis on correctional programs that exist in the community rather than in large-scale institutions.

Diversion

One of the recent developments in the criminal justice system is diversion, which means removing offenders from the criminal or juvenile justice systems and placing them under a less restrictive form of supervision. Defendants are diverted at the early stages of the criminal justice system *before* they are found guilty of any offense. The theory behind diversion is that when people become involved in the criminal justice system, they are stigmatized and labeled by others. Gradually, they take on a criminal "identity" and continue to pursue their "criminal careers." It is felt that if minor offenders did not enter the criminal justice system in the first place, their law breaking in the future might be avoided.

Another reason for the increased use of diversion is economic. Courts and correctional programs are very expensive and are currently overcrowded. In theory, the number of cases being handled by the courts should decrease if the diversion programs are more fully utilized. This expectation has not been fulfilled. At present, the courts are handling the same groups of people as previously, while the diversion programs are attending to minor violators who would never have been involved in the criminal or juvenile justice systems if the diversion programs had not existed. That is why Messinger claims that a larger percentage of the American population will be under some form of state surveillance in the future.

Probation and Parole

Probation and parole are both aspects of the corrections segments of the criminal justice system. In general, probation refers to a form of supervision that takes place *if* the defendant does not go to prison. Instead he periodically sees a probation officer who is supposed to help him solve his personal and economic problems and keep him from committing another offense. In most jurisdictions, parole refers to the supervision of an offender *after* he gets out of prison. At that time the parole officer is to provide the same sort of supervision as the probation officer. It should be noted, however, that in some jurisdictions these general terms have different meanings. In the reading selection about Judge Wright, for example, granting pretrial release on one's own recognizance is called parole.

Recidivism (see also p. 7)

Recidivism is the commission of a new crime by someone who has previously committed a crime. The recidivism rate, then, is the number or percent of offenders who commit new offenses after their release from some correctional program. The recidivism rate has been used as a general measure of the effectiveness of various correctional programs. As was pointed out in the Martinson article, the recidivism rate has remained high no matter what programs have been tried.

FACTUAL REVIEW QUESTIONS

1. According to Rothman, on what methods of punishment did our forefathers rely?
2. What purpose did jails serve during the colonial period?
3. What ambitions did the Jacksonian reformers share?
4. What did the Progressives try to do to the prison environment?
5. What did the new generation of prison reformers begin to do in the mid-1960s?
6. According to the Sellin selection, what were the origins of the prison system?
7. What did Beccaria claim should be the aim of punishment?
8. What were the two types of prison systems in the 1830s?
9. What did the two systems have in common and how did they differ?
10. How did de Beaumont and de Tocqueville feel about the introduction of labor into prison?
11. According to the Reader selection about Attica, what did the National Prison Association declare to be the purpose of penal treatment in 1870?
12. When did Attica open?
13. According to the Irwin newspaper article, what type of prison is the "big house"?
14. According to Irwin, where do criminals learn about crime?
15. What discrepancy in prisons has produced a sense of rage and injustice on the part of inmates?
16. How does Irwin suggest we increase deterrence and reduce turmoil in prisons?
17. According to McCleery, what is a general goal of inmates?
18. How does a new inmate gain acceptance into a protective primary group?
19. According to the Irwin Reader selection, what is the attitude of felons toward treatment programs?

20. What were some of the factors, cited by Irwin, that resulted in disillusionment with rehabilitation?

21. According to Simon, do women's prisons or men's prisons offer a wider variety of vocational training programs?

22. Approximately, what percent of the people sent to a federal or a state prison in 1971 were women?

23. For what types of offenses do women seem to receive preferential treatment?

24. According to the Messinger article, what might be the outcome of the move toward "just deserts" in sentencing?

25. According to the Reader selection by Martinson, what has been the effect of rehabilitation programs?

ESSAY AND DISCUSSION QUESTIONS

1. **Discuss the evolution of punishment from sixth-century Europe to present-day America. What changes have taken place and what were the sources of those changes?**

Suggested Guidelines

1. Refer to the Reader selection by Sellin. To whom did the common punishments originally apply?
2. Examine the newspaper article by Rothman.
   a. How has punishment changed in the United States since colonial times?
   b. What led to the ideology of rehabilitation?
3. Consult the Reader selection by de Beaumont and de Tocqueville. What two prison systems arose in the beginning of the nineteenth century?
4. Refer to the Reader selection on Attica. What are the similarities between Attica and the original Auburn model?

2. **How has the prison community changed from the days of the "big house" to its current state?**

Suggested Guidelines

1. Refer to the Irwin newspaper article for an outline of the evolution of the prison community.
2. Review McCleery's Reader selection for a description of the type of prison Irwin calls the "big house."
   a. On what basis did interpersonal relations rest in this type of prison?
   b. What were some of the cardinal principles of the inmate code?
3. Consult Irwin's Reader selection. In what way have inmate attitudes toward rehabilitation changed?
4. Refer to Bunker's article, "War Behind Walls," for a description of current prison conditions. What does he imply about racial tensions and violence?

3. **What does the future hold for punishment in America?**

Suggested Guidelines

1. Review Messinger's newspaper article.
   a. What does he say about the complementary trends of punishment?
   b. What will result from the move toward "just deserts"?
2. Refer to Martinson's Reader selection.
   a. What does he say about the effectiveness of rehabilitation?
   b. What does he recommend?
3. Compare the Reader selection by Rothman with the survey from *Corrections Magazine*. Will there be more or less penal incarceration in the future?
4. Examine the Reader selection by Wilkins. Does he feel that prisons will be with us for a long time? Why?

SUGGESTED READINGS

Articles

Keldgord, Robert E., and Robert O. Norris. "New Directions for Corrections." *Federal Probation*, March 1972, 3–9.

Murton, Tom. "Attica: The Official Report." *Journal of Criminal Law* 64 (1973), 494–499.

Pepper, Claude. "Prisons in Turmoil." *Federal Probation*, December 1972, 3–11.

Salzman, Ed. "The Great Prison Debate." *California Journal*, July 1974, 216–221.

Books

Giallombardo, Rose. *Society of Women: A Study of a Women's Prison*. New York: Wiley, 1966.

Jackson, George. *Soledad Brother*. New York: Bantam, 1970.

Sellin, Thorsten, ed. *Capital Punishment*. New York: Harper & Row, 1967.

Sykes, Gresham M. *The Society of Captives*. New York: Atheneum, 1966.